

**IN THE COURT OF MS. RUCHIKA SINGLA,
DISTRICT JUDGE-03, NORTH-WEST DISTT.,
ROHINI COURTS, DELHI**

09.09.2024

CS DJ no. 594/18

MADHU VYAS Vs. SANJAY SIGHANIA

ORDER

1. Vide this order, I shall dispose of the application u/o 6 rule 17 CPC filed by the defendant seeking amendment in the WS. Reply of the plaintiff is already on record. Arguments were advanced on the last date of hearing. I have also gone through the record.

2. Briefly stated, the facts of the case as alleged by the plaintiff are that her father Shri Shiv Dutt Purohit was the owner of the suit property and he gifted the same to the plaintiff vide a Gift Deed dated 15.06.2010. It is stated that the father of the defendant Shri Shiv Bhagwan Singhania was an old friend of the father of the plaintiff. He requested the plaintiff to give the suit property on rent which was agreed to by the plaintiff and thereafter the plaintiff through her Power of Attorney, executed a registered Lease Deed in his favour on 15.06.2010. The lease was never extended in

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writing and the same continued to be extended on month to month basis. Later on, Shri Shiv Bhagwan Singhanian expired and his son i.e. the defendant Sanjay Singhanian continued to remain in the property. Thereafter, the plaintiff filed the present suit for eviction and arrears of rent as it was alleged that the defendant had not paid the rent since January 2016.

3. In the WS, the defendant admitted the ownership of the plaintiff. However, he alleged that the property was sold by the plaintiff to him by way of an Agreement to Sell/ bayana receipt for a total consideration amount of Rs. 55 lakhs. It was stated that the said agreement was executed between the defendant and the plaintiff through her POA namely Sh. Rahul Sharma. It was also stated that the defendant had paid an earnest amount of Rs. 7 lakhs to the Attorney of the plaintiff and that later on, the plaintiff did not come forward to execute the Sale Deed in his favor. Hence, the defendant sought the dismissal of the suit and he filed a counterclaim seeking a decree of specific performance.

4. Now, the defendant seeks to amend the WS on the ground that while preparing the cross examination of the plaintiff's

witness, it was discovered that the original defendant i.e. Sh. Sanjay Singhania had sent a sum of US \$ 1500 equivalent to Rs. 1,07,250/- to the plaintiff in USA on 31.07.2018. It is submitted that this fact was disclosed by Sh. Purshotam Singhania, the brother of the defendant who was continuously in touch with the defendant as well as the plaintiff. Further, the defendant had sent the entire conversation to Sh. Purshotam Singhania on Whatsapp. Hence, it is submitted that these facts are relevant to be incorporated in the WS and hence, the present application is filed. In this regard, Ld. Counsel for the defendant has relied upon judgments as follows:-

- a) The State of Bihar and Ors vs. Modern Tent House & Anr. CA no. 3845/2008, decided on 16.08.2017.
- b) Baldev Singh Vs. Manohar Singh CA no. 3362/2006, decided on 03.08.2006.
- c) M/s Ganesh Trading Co. Vs. Moji Ram CA no. 1338/1977, decided on 25.01.1978.
- d) Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel CA no. 5901-202 of 2021, decided on 07.10.2021.
- e) LIC Vs. Sanjeev Builders Pvt. Ltd. & Anr., CA no. 5909/2022 (Arising out of SLP© No. 22443 of 2019), decided on 01.09.2022.

5. Ld. Counsel for the defendant has argued that the said judgments are squarely applicable to the facts of the case. It is submitted that the amendment which is sought can be allowed at this stage as the same are explanatory facts.
6. Per contra, Ld. Counsel for the plaintiff has strongly opposed the application. It is submitted that as per the defendant's own case, these facts were always in the knowledge of the defendant but still the same were not mentioned in the original WS. Further, the plaintiff's witness has already been cross examined partly and now the defendant is trying to delay the matter on one pretext or the other. It is submitted that there was no requirement to file the present application as these facts could have been raised in the cross examination. Hence, it is submitted that the amendment application may be dismissed.
7. Record perused.
8. Perusal of record shows that the first WS which was filed, was filed by the defendant himself and only after the framing

of the issues, the defendant expired and his LRs were impleaded on record. The WS was filed by the defendant on 05.09.2018 and as per the application, the amount was sent by him to the plaintiff on 31.07.2018. In the application, it has been alleged that these facts were disclosed by Sh. Purshotam Singhania, brother of the defendant and that these WhatsApp chats were shared by the defendant to him. Hence, it is clear that these facts were in the knowledge of the defendant at the time of the filing of the WS. As on the date of the filing of the WS, it had been only two months that he had allegedly sent this amount to the plaintiff. Hence, it was not even the case that the facts were forgotten due to lapse of time. Hence, as these facts were clearly in the knowledge of the defendant at the time of the filing of the WS and still the same were not incorporated in the WS, the application is liable to be dismissed on this ground alone.

9. Further, the court is inclined to agree with the argument of the Ld. Counsel for the plaintiff that these facts could be put to the plaintiff's witness during cross examination. The facts which are sought to be added in the WS are only explanatory to the stand which is already taken by the defendant. Hence, the cross

examination on these lines is permitted. As mentioned above, these facts were clearly in the knowledge of the defendant at the time of the filing of the WS when he was alive, which was filed only two months after the alleged payment. However, for no sufficient reason, these facts were not included in the WS. Hence, the court is not inclined to allow the said application at this stage. The application is dismissed.

10. However, as mentioned earlier, the defendant is permitted to cross examine the plaintiff on these points. Hence, with these directions, the application is disposed off.

(RUCHIKA SINGLA)
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