

04.02.2023

**ORDER**

Present: None for plaintiff.

Sh. Sunil Kumar, counsel for defendant no.1.

This is an application under Order VI Rule 16 CPC r/w Section 151 CPC moved on behalf of plaintiff seeking striking of written statement filed by the defendant no.1 to the amended plaint of the plaintiff.

It is submitted that the plaintiff had filed instant suit for declaration, possession and permanent injunction which was rejected upon application under Order VII Rule 11 CPC by the court of Sh. Vishal Pahuja, Ld. Civil Judge, Saket Court vide order dated 18.10.2016. Plaintiff went into appeal against the said order and appeal was allowed by the court of Ms. Vandana Jain, Ld. ADJ vide order dated 20.10.2018. In compliance of said order, plaintiff moved an application under Order VI Rule 17 CPC r/w Section 151 CPC for amendment of plaint which was subsequently allowed.

It is further submitted that defendant no.1 filed written statement to the amended plaint wherein he has changed the pleadings entirely and pleaded new facts before the court. It is further submitted that defendant no.1 was allowed to file amended written statement only and not to amend his entire written statement.

No reply was filed by the defendant no.1 to the application of the plaintiff under Order VI Rule 16 CPC r/w Section 151 CPC. However, the defendant no.1 has filed his written submissions to the plaintiff's application. He submitted that plaintiff filed the original suit in the year 2009 and withdrew the same after leading plaintiff evidence with liberty to file afresh after incorporating some changes. The instant suit was filed in the month of April 2019 wherein written statement was filed by the defendant no.1 but no replication was filed on behalf of plaintiff.

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It is further submitted that the plaintiff filed an application under Order VI Rule 17 CPC which was dismissed on 04.10.2013 and plaintiff again filed second application under same provision. However, plaintiff filed third fresh application under the same provision on 18.02.2016 which was allowed by hon'ble Court vide order dated 31.05.2016 and defendant no.1 was granted time to file fresh written statement. Defendant no.1 went in appeal against the order which was dismissed by Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi directed that application under Order VII Rule 11 CPC filed on behalf of defendant no.1 be decided first. Same was decided in favour of the defendant no.1 and plaint was rejected vide order dated 18.10.2016. It is further submitted that right of the defendant no.1 to file the amended written statement was never closed.

It is further submitted that plaintiff again went into appeal and suit was restored. Plaintiff again filed an application under Order VI Rule 17 CPC to correct the valuation of suit which was allowed on 25.04.2019. Thereafter, defendant no.1 filed his fresh amended written statement to the amended suit on 22.07.2019. It is submitted by defendant no.1 that no new facts have been incorporated by him in the amended written statement and only the narration has been changed. Therefore, the application of the plaintiff is liable to be dismissed.

Arguments heard and record perused.

It is observed that the plaint of the plaintiff was initially rejected by the court of Ld. Civil Judge and when plaintiff went into an appeal, Ld. ADJ allowed the plaintiff to amend the plaint while setting aside the order of rejection. The plaintiff was allowed to correct the valuation and also cure the defect of describing the suit property properly. The defendant filed his fresh written statement qua the amended plaint after which the present application was moved.

I have perused the written statement filed by the defendant on 26.08.2012 as well as the amended written statement filed on 22.07.2019. The facts mentioned in both the written statement are same and only the narration and

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the paragraphing has been changed by the defendant. The defendant has taken similar preliminary objections as he had taken in initial written statement and no material changes have been made by the defendant no.1. No contradictory stands or pleas have been taken by the defendant no.1 as alleged.

Therefore, this Court finds no merit in the application under Order VI Rule 16 CPC and no grounds are made out for striking out the pleadings of the defendant. Order VI Rule 16 CPC read as follows :-

**Striking out pleadings** : Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of Court.”

The court has observed that written statement does not fall under any of the above grounds and therefore the application under Order VI Rule 16 CPC stands dismissed with cost of Rs.5,000/- to be paid to the defendant no.1 by the plaintiff.

Application is accordingly disposed of.

Put up for filing of replication on 12.05.2023.

(Purva Sareen)  
ADJ-01, South District  
Saket Court, New Delhi  
**04.02.2023**