

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST)
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 33/2021
CNR NO. DLWT01-000288-2021**

Smt. Suman Sangwan

Plaintiff

Vs.

Smt. Santosh & Ors.

Defendants

**ORDER ON APPLICATION UNDER ORDER 6 RULE 17
READ WITH SECTION 151 CPC MOVED ON BEHALF OF
PLAINTIFF FOR AMENDMENT OF PLAINT.**

1. Vide this order, I shall decide the application moved u/o 6 rule 17 read with section 151 CPC filed on behalf of the plaintiff for seeking amendment of the plaint.

2. It is averred in the application that plaintiff has filed the suit for specific performance, possession and injunction wherein averments in regard to the claim/relief have already been pleaded. However, it is further averred that Sh. Sagar Tanwar, i.e. son of the defendant had filed an application under order 1 rule 10 CPC to be impleaded as defendant no. 2, citing the reason

that he is necessary and interested party in the present suit and for proper adjudication of the suit, his above said application was allowed and plaintiff was directed to file amended memo of parties and the same was filed in compliance of order dated 14.08.2023.

3. It is further averred that the keeping in view the order 1 rule 10 (4) CPC and in the light of new development in the present case, the plaintiff filed the amended plaint and same was taken on record vide order dated 16.10.2023.

4. It is further averred that on 04.01.2024, the counsel for the defendants raised objection for taking the amended plaint on record without any formal application being filed by the plaintiff and therefore, accordingly, defendants moved an application under section 151 CPC for taking amended plaint off the record.

5. It is further averred that the plaintiff has filed the amended plaint to the effect that the averments have been incorporated qua the new facts regarding newly impleaded defendant no. 2 and in view of new pleaded facts, it was imperative to modify the prayer and accordingly new prayer clause was also added in the plaint to avoid any technicality in future, as such new para in para no “a” in prayer clause of the original plaint is added as follows:

“If this Hon’ble Court comes to the conclusion that plaintiff is not entitled to a decree of specific performance of sale deed of suit property bearing WZ-1A, Third Floor, Tatarpur, New Delhi-110027 in her favour then this Hon’ble Court may direct defendants to refund the entire amount of Rs. 9,90,000/- (Rupees Nine Lacs Ninety thousand) back to the plaintiff alongwith interest @ 24% p.a from the date of its payment till its realization.”

6. It is further averred that the aforesaid amendments sought by plaintiff have no bearing on the nature of the suit and the nature of the suit does not change and the said amendments are necessary for just, proper and complete adjudication of the dispute between the parties. It is further averred that the present matter is at the inception stage, issues have not been framed, even the pleading are not completed and as such no prejudice would be caused to any party if the present application is allowed and amended plaint is taken on record.

7. Per contra defendants averred in their reply to the above said application of the plaintiff that the application of the plaintiff is an abuse on the process of law and liable to be dismissed with cost.

8. It is further contended that under the garb of present application, the plaintiff is trying to claim the relief of recovery of an amount allegedly paid by the plaintiff to defendant no. 1 which is highly time barred.

9. It is further contended that no amount whatsoever has been paid to defendant no. 2, who is the owner of ground floor, first floor, third floor and terrace of the third floor of property bearing no. WZ-1A, Village Tatar Pur, New Delhi-110027 measuring 108 Sq. yards and as such the proposed amendments against defendant no. 2 is not maintainable and the present application filed under order VI rule 17 CPC may kindly be dismissed with cost.

10. On merit, it is submitted that neither any alleged amount transferred or nor paid to defendant no. 2 nor the defendant no. 2 took any amount from the plaintiff as loan nor the defendant no. 2 is the executor of the alleged Agreement to sell dated 15.06.2020, therefore, the plaintiff cannot amend his plaint and also cannot seek any relief against the defendant no. 2 as per the law.

11. Arguments heard. Case file perused. Ld. Counsel for defendant have also filed judgments of Hon'ble Supreme Court

of India as well as Hon'ble High Court of Delhi i.e. AIR 2009 SC 1407 in case titled H.P. State Forest Company Vs United India Insurance Co. Ltd., AIR 1996 SC 642, in case titled The Oriental Fire & General Insurance Company Ltd. & Ors., 150(2008) DLT 294, titled Surinder Kumar Vs Swaran Singh and in a case titled as Lumax Industries Ltd. Vs DESU, (MANU/DE/0471/1997) 66 (1997) DLT 272, on the point of sought amended relief barred by limitation Act and the said judgments have been duly considered while passing the present order. The above said judgments are distinguishable on facts and not applicable to the facts of the present case for deciding present application u/o 6 rule 17 CPC.

12. As per order 6 Rule 17 CPC, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall made as may be necessary for the purpose of determine the real questions in controversy between the parties.

13. The Hon'ble Supreme Court of Delhi in the case title as **“Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75** Supreme court has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate

injustice by any oppressive or punitive use.

14. The Hon'ble Supreme Court of Delhi in the case title as **“Life Insurance Corporation of India Vs Sanjeev Builders Private Limited & Anr, 2022 live law (SC) 729 held as follows.**

70 our final conclusion may be summed up thus:

(XI) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

15. In the present case, issues have not yet been framed and trial has not been commenced.

16. On 14.08.2023, application under order 1 rule 10 CPC was allowed and Sh. Sagar Tanwar was added as defendant in the present case. By way of present application the plaintiff wants to add pleadings regarding newly added defendant/ Sagar Tanwar.

As per order 1 rule 10 CPC, plaintiff has the right to amend the plaint to incorporate pleading regarding the newly added party.

17. The plaintiff also wants to add alternative prayer regarding directing the defendants to refund the entire amount of Rs. 9,90,000/- back to the plaintiff alongwith interest @ 24% p.a from the date of its payment till its realization.

18. In an civil appeal titled **Life Insurance Corporation of India Ltd Vs Sanjeev Builders Pvt. Ltd. & Anr.** the Hon'ble Supreme Court of India in 2022 Live Law (SC) 729 has held as under:

11.We are, however, of the view that since the legislature has contemplated that an amendment within the meaning of the provisos to section 21(5) and section 22(2) of the specific Relief Act, 1963 can be made at any stage of the proceeding, such an amendment would not be barred by limitation. Even as a matter of first principle, an application for amendment must be distinguished from the cause of action which is sought to be set up by the amendment. As a matter of general principle, though an application for amendment is allowed, the question as to whether the cause of action is within limitation would have to be determined and adjudicated upon. While allowing an amendment, it is always open a Civil Court to direct that the amendment shall not relate back to the institution of the

proceedings. The Court would therefore have to determine at trial whether the cause of action is within limitation or is barred. Where the legislature has contemplated that the plaint can be amended at any stage of the proceedings as stipulated in the provisos to section 21(5) and section 21(2). Such an amendment of the nature contemplated by those provision can indeed be brought about at any stage of the proceedings”.

19. In view of above said judgment of Hon’ble Supreme Court of India and as per proviso of Section 22 (2) of Specific Relief Act, 1963, the plaintiff can claim relief of refund of earnest money, at any stage of the proceedings. Accordingly, application of plaintiff under order 6 rule 17 CPC is allowed but the amendment shall not relate back to the institution of the proceedings and it will relate back to the date of filing of application under order 6 rule 17 CPC and the objection of defendant that the cause of action for claiming refund of money is time barred will be determined and adjudicated upon after leading evidence, at the time of final adjudication of the case.

**Announced in the open court on
19th day of September, 2024**

**(SHIV KUMAR)
DJ-02, WEST
TIS HAZARI COURT
DELHI**