

Civ DJ 10688/16

KARNAIL SINGH Vs. KULDIP KAUR

27.03.2024

Present: Sh. A.D. Malik, Id counsel for plaintiff.

Sh. Gagandeep Singh, Id proxy counsel for defendant.

Two applications moved by defendant are pending disposal. First application is under Order 6 Rule 17 read with Section 151 CPC. Second application is under Order 8 Rule 1A(3) read with Section 151 CPC.

Arguments have already been heard. Record perused.

In application under Order 6 Rule 17 read with Section 151 CPC, it is submitted by defendant that plaintiff has filed the present suit for specific performance of the Agreement to Sell dated 27.03.2015 and / or in the alternative, for recovery of damages of Rs.73,00,000/- as well as permanent injunction. It is further submitted that in his plaint, plaintiff has specifically mentioned that son of defendant had taken a sum of Rs.9,90,000/- from son of plaintiff on 13.10.2012 and it was agreed that same would be adjusted in the final sale consideration. It is submitted that before filing the present suit, plaintiff filed a civil suit for recovery of the amount of Rs.9,90,000/- alongwith interest. It is further submitted that the fact of adjustment was not mentioned in the earlier suit in order to take advantage of the same. It is submitted that said facts were duly apprised to his earlier counsel by defendant, however, earlier counsel did not incorporate the same in the written statement of defendant. By way of present

application, request has been made to allow the such amendment in written statement, which is concerning to above facts and is mentioned in the present application.

As per order VI Rule 17 CPC,

“17. Amendment of pleadings.—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 be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

This Court is of the considered view that perusal of record shows that present matter has reached at the stage of DE and even as per the plea of defendant, defendant was well aware about the facts qua which amendment is being sought despite that same were not incorporated in the written statement of defendant and present application was moved when case had reached at the stage of DE. In view of the above, it is clear that trial has commenced in this matter

and in view of the Court, defendant could raise the plea / matter before the commencement of trial despite that he chose not to raise the same, in view of the said facts and proviso of Order VI Rule 17 CPC, present application is without any substance and accordingly, same is dismissed.

By way of application under Order 8 Rule 1A(3) read with Section 151 CPC, defendant wants to file on record the additional documents which are related to the amendment, which was sought in application is under Order 6 Rule 17 read with Section 151 CPC. As application under Order 6 Rule 17 read with Section 151 CPC has been dismissed, accordingly said documents are not relevant documents, so application under Order 8 Rule 1A(3) read with Section 151 CPC is also dismissed.

Matter be put up for DE on **15.05.2024**.

(Dharmender Singh)
Additional District Judge-01(West)
Tis Hazari Courts, Delhi
27.03.2024