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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+CS(OS) 61/2021

HARISH GUPTA

..... Plaintiff

Through: Mr. Shiv Charan Garg and
Ms. Jahanvi Garg, Advs.

versus

PRADEEP GUPTA & ANR.

..... Defendants

Through: Sh. Divij Garg, Adv. for
D-1 along with D-1 in
person

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. DEVENDER NAIN
(DHJS)**

ORDER
29.03.2023

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IA No. 4378/2023

It is submitted by counsel for plaintiff that defendants have not filed reply to the above mentioned application till date. Let the same be filed within the time already granted vide order dated 03.03.2023.

List on the next date.

IA No. 6088/2023 application on behalf of defendant no.1 u/s 151 CPC for amendment/correction in order dated 03.03.2023.

Heard. Notice of above mentioned application has been accepted by counsel for plaintiff. It is further submitted by counsel for plaintiff that he does not wish to file any reply to present application and also have no objection if the same is allowed. Considering the submissions and grounds mentioned in the application, present application is hereby allowed and disposed of.



It is submitted by counsel for plaintiff that limitation period to file reply to IA No.4378/2023 be calculated from 03.03.2023. Order dated 03.03.2023 be read accordingly.

IA No.12716/2022 filed by plaintiff

Vide this order, I shall dispose of above mentioned application. At the time of arguments, it is submitted by counsel for plaintiff that written statement was filed somewhere in October, 2019 and from 24.03.2020, there was complete lock down due to Covid-19 at national level and present application was filed in the month of July, 2022 i.e., after summer vacation of June, 2022.

It is submitted by counsel for defendant no.1 that present application has been filed around delay of three years. It is further submitted by counsel for defendant no.1 that one application bearing IA No. 364/2021 was filed by counsel for plaintiff in December, 2020. Counsel for defendant no.1 also drawn attention of undersigned to para 2 of reply filed by defendant no.1 to the present application. In reply to this it is submitted by counsel for plaintiff that for counting limitation period to file present application, the period from 01.03.2020 to 31.05.2022 has to be excluded due to direction of Hon'ble Supreme Court and nothing happened during that period.

It is further submitted by counsel for plaintiff that he has already mentioned/raised the same typographical error in his replication to the written statement to defendant no.1, in para 5 on reply on merits. In reply to this, it is submitted by counsel on behalf of defendant that he has nowhere and never mentioned that he is not in a possession of property bearing no.C-242, Sector-4, Bawana Industrial Area, Delhi.

It is further submitted by counsel for defendant no.1 that regarding property bearing no.C-242, Sector-4, Bawana



Industrial Area, Delhi, defendant no.1 had never mentioned in his written statement that it is in the possession of defendant no.1. Counsel for defendant no.1 further submitted that he had simply denied the fact in his “para wise reply on merits”.

Submission of both the sides heard and considered. Judicial record perused very carefully.

Through present application, counsel for plaintiff requested that due to typographical error, property bearing no.C-242, Sector-4, Bawana Industrial Area, Delhi has been mentioned as property No.C-244, Sector-4, Bawana Industrial Area, Delhi in the plaint and requested to correct the property number mentioned as property bearing no.C-244, Sector-4, Bawana Industrial Area, Delhi as property No.C-242, Sector-4, Bawana Industrial Area, Delhi. It is further submitted by counsel for plaintiff through present application that suit is at initial stage and trial has not commenced in as much as issues has not been framed so far, hence no prejudice is to be caused to the defendant, if present application is allowed. Plaintiff be permitted to amend the plaint to this effect. It is further submitted by counsel for plaintiff that he is not changing his stand nor setting up a new case and the same is only due to typographical error.

Reply to the present application filed by defendant no.1 perused carefully along with written statement filed by defendant no.1

Regarding property bearing no.C-244, Sector-4, Bawana Industrial Area, Delhi, counsel for defendant no.1 categorically stated in his reply to present application and also in para 5 of para wise reply on merits of written statement that property bearing no.C-244, Sector-4, Bawana Industrial Area, Delhi was neither purchased by Sh. Nanak Chand Gupta nor he provided any funds for this property. Defendant no.1 is also not the owner of the



property. But same is the ~~rank~~ of plaintiff through present application qua property bearing no.C-244, Sector-4, Bawana Industrial Area, Delhi. It is also mentioned by defendant no.1 in his reply that second application, with the same prayer is barred till the first application is disposed of in accordance with law. However in para 5 of present application, it has been mentioned by counsel for plaintiff that he had earlier filed similar application u/O VI Rule 17 r/w section 151 CPC, 1908 and further submitted that since present suit was converted as ordinary suit instead of commercial suit, vide order dated 11.01.2021 and the previous application was under objection and in these circumstances, the plaintiff has filed the fresh application in the present suit u/O VI R.17 CPC.

In the present application in para 2 it has been mentioned by counsel for plaintiff that he has wrongly sought partition of property bearing no.C-244, Sector-4 Bawana Industrial Area, Delhi and further submitted that defendant is in possession of property bearing no. C-242, Sector-4 Bawana Industrial Area, Delhi as per para no.5 of para wise reply on merits in written statement filed by defendant no.1. It is submitted by counsel for defendant no.1 in his reply, in para 3 that defendant no.1 has never stated anything in para 5 of parawise reply on merits in his written statement as false and averred by plaintiff in para 2 of his application. It appears that defendant no.1 cleverly avoided to clarify the averment of possession made by counsel for plaintiff through present application. Further counsel for plaintiff is himself submitting that the property was purchased by Sh. Nanak Chand Gupta from his own funds, but in the name of defendant no.1 Sh. Pradeep Gupta. No specific admission or denial is made by counsel for defendant no.1 in his whole reply regarding above



mentioned averment. Though for the perusal of judicial record it is clear that counsel for defendant no .1 has never stated anything in para 5 in parawise reply on merits of his written statement regarding the possession/ownership of property bearing no.C-242, Sector-4 Bawana Industrial Area, Delhi but same point has also not been cleared on behalf of defendant through reply to the present application. Only vague denial is made by counsel for defendant no.1 in para 3 of his reply to the present application regarding the current in possession of property bearing no.C-242, Sector-4 Bawana Industrial Area, Delhi. I am of the considered opinion and in these circumstances I am of the considered opinion that property bearing no.C-244, Sector-4 Bawana Industrial Area, Delhi has been mentioned in place of property bearing no.C-242, Sector-4 Bawana Industrial Area, Delhi in the plaint by typographical error. In view of above mentioned discussions, the present application is disposed of.

After perusal of order sheet, matter be put up for consideration on IA No. 11222/2020 and IA No. 364/2021 for interrogatories for 16.08.2023.

**DEVENDER NAIN (DHJS),
JOINT REGISTRAR (JUDICIAL)**

MARCH 29, 2023/cd



This is a digitally signed order.

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