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

+ **CM(M) 721/2023**

CHANDER BHAN DECEASED

THROUGH LRS & ORS

..... Petitioners

Through: Ms. Vibha Mahajan Seth, Adv.

versus

HIRA PRASAD MISHRA & ANR

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

03.05.2023

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[The proceeding has been conducted through Hybrid mode]

CM APPL. 22503/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 721/2023 & CM APPL. 22502/2023 (Stay)

3. The petitioner challenges the order dated 03.03.2023 in Civil Suit No. 1075/2018 titled '*Chander Bhan (Deceased Through LRs) & Ors. Vs. Mr. Hira Prasad Mishra & Anr.*' whereby the learned Trial Court had dismissed the application filed on behalf of the petitioner / plaintiffs under Order VI Rule 17 CPC, 1908 seeking necessary amendment to the plaint.
4. Ms. Seth, learned counsel appearing for the petitioner submits that the suit was originally filed in the year 2011 and subsequently, due to the *inter se* dispute between the plaintiffs, the requirement to file an application under Order I Rule 2 CPC, 1908 was necessitated and as such was also filed.



5. Ms. Seth submits that the said application was filed in the year 2015 and it was only in the year 2018 that the learned Trial Court had permitted such separate complaints to be filed.
6. Ms. Seth submits that it was only subsequent thereto that the petitioner /plaintiffs could have filed any such application under Order VI Rule 17 CPC seeking amendments.
7. Ms.Seth also submits that the application under Order I Rule 2 CPC, also referred to the fact that there would be a requirement to amend the plaint.
8. On that basis, Ms. Seth submits that the observation of the learned Trial Court that the application was filed with unexplainable delay, is incorrect on the facts of the present case.
10. Issue notice. On petitioner taking steps within a week, notice may be served upon the respondent through all permissible modes. Additionally, through learned counsel appearing for the respondent before the learned Trial Court.
11. Reply, if any, be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.
12. In the meanwhile, learned Trial Court shall defer its proceedings stated to be listed for 16.05.2023 to a date beyond the date fixed by this Court.
13. List on 17.10.2023.

TUSHAR RAO GEDELA, J

MAY 3, 2023/ms