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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1116/2022 & CM APPL. 45209/2022
SMT PADMA WATI DECEASED THROUGH HER LR
MANMOHAN Petitioner

Through: Mr. Love Sharma, Adv.

versus

SH SAFI MOHD DECEASED THROUGH LRS AND ORS
..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
18.10.2022

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45210/2022, CM APPL. 45211/2022 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 45212/2022 (condonation of delay)

3. The condonation of delay is allowed.

CM(M) 1116/2022 & CM APPL. 45209/2022

4. The order dated 22nd July 2022, passed by the learned Civil Judge in 8030/2016 (*Smt. Padma Wati v. S H. Safi Mohd.*) under challenge in the present petition under Article 227 of the Constitution of India, rejects an application filed by the petitioner as the plaintiff in



the suit, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), seeking to amend the suit.

5. The learned Civil Judge has rejected the application, observing that the petitioner was seeking to introduce fresh documents at the stage of final arguments. It is additionally observed in the impugned that no reason was cited, in the application filed by the petitioner under Order VI Rule 17, as to why the documents could not have been placed on record earlier. According to the impugned order, upon filing of written statement by Defendant 4, the petitioner had ample opportunity to move the application under Order VI Rule 17.

6. Ordinarily, it is true that there is a statutory prescription, engrafted in the proviso to Order VI Rule 17 of the CPC, against amendments in a suit after trial has commenced. It is also correct that, in the present case, trial had commenced before the petitioner filed the application under Order VI Rule 17 which stands rejected by the impugned order. It is also true that the application does not contain any specific assertion to the effect that the petitioner could not have raised the said pleas, which the petitioner sought to raise by way of amendment, prior to commencement of trial.

7. In the present case, however, Mr. Love Sharma, learned counsel for the petitioner points out that the prayer for amendment was necessitated because, under cover of an index dated 6th August 2018, unaccompanied by any application, Defendant 4 sought to place on record a sale agreement, pay receipt, sale deed and possession letter



dated 18th September 2013, to which there is no reference in the written statement filed by the defendant. Mr. Love Sharma submits that the averments that the petitioner was seeking to incorporate in the plaint by way of an amendment were intended to address the said documents. He also points out that though order dated 27th August 2018, by the reader in the court of the learned Civil Judge (as the learned Civil Judge was on leave on that date) records that the documents were accompanied by an application, no copy of any such application has been provided to him or to his clients.

8. In these circumstances, Mr. Love Sharma submits that the learned Civil Judge was in error in recording that the petitioner had ample opportunity to file the application for amendment after filing of written statement by the respondent.

9. In that view of the matter, issue notice, returnable on 18th January 2023. Notice be served on the respondent by all modes, including *dasti* as well as through learned counsel who appears on behalf of the respondent before the learned ADJ, if any.

10. Reply, if any, be filed within four weeks, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, within four weeks thereof.

11. Till the next date of hearing, there shall be a stay of proceedings before the learned Civil Judge in CS 8030/2016.



12. List on 18th January 2023.

OCTOBER 18, 2022
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C. HARI SHANKAR, J