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

+ **CS(COMM) 653/2024**

**SH KANWAL SINGH SOLANKI** .....Plaintiff

Through: Mr. Sandeep Khatri, Mr. R.K. Khatri  
and Ms. Shivani Negi, Advocates.

versus

**SH RICHIE SHEKHER & ORS.** .....Defendant

Through: Ms. Avni Singh, Adv for D-3.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

**22.10.2024**

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**I.A. 41300/2024**

1. This application under Order VI Rule 17 CPC has been filed on behalf of the Plaintiff seeking amendment of plaint by bringing subsequent developments on record after filing of the present suit.
2. The present suit being CS(COMM) 653/2024 for recovery of possession, unpaid arrears of rent, damages/mesne profits and injunction qua Property measuring 3000 Sq. Yds comprising in Khasra No.766 and 767, Karan Vihar Phase-5, Kirari Suleman Nagar, Delhi-110086 (*hereinafter referred to as "Property in question"*).
3. It is stated by the learned Counsel for the Plaintiff that pursuant to the filing of the present suit, due to some acts of the tenant at the property in question, the property in question has been sealed by the SDM, Kanjhawala, Delhi on 12.09.2024. It is stated that the Plaintiff intends to bring these facts



in the plaint for the reason that it will strengthen the present suit for possession to point out that the Defendants are carrying on activities at the property in question which is contrary to municipal by-laws. It is stated that the Plaintiff, therefore, wants to incorporate Paragraph Nos.10A, 10B, 10C mentioned in the application and also the cause of action paragraph in the plaint.

4. In view of the fact that only the written statement by Defendant No.3 has been filed and the trial has not yet commenced, this Court is of the opinion that amendments are of such nature which can be permitted.

5. The Apex Court in Pankaja & Anr. v. Yellappa & Ors., **2004 (6) SCC 415**, has observed as under:-

*“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.*

*13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.*

*14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an*



*amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.*

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**16.** *This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392] . Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.*

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**18.** *We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by*



*the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”*

6. The said paragraphs have been quoted with approval by the Apex Court in Life Insurance Corporation of India v. Sanjeev Builders Private Limited & Anr., **2022 SCC OnLine SC 1128**. The Apex Court has held that the courts must be liberal in permitting amendments unless the amended claim is barred by limitation on the date of the application.
7. The amended plaint is taken on record.
8. Written statement(s) to the amended plaint be filed within 30 days from today.
9. The application is allowed.

**CS(COMM) 653/2024**

List before the Ld. Joint Registrar on 23.10.2024.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 22, 2024**

*S. Zakir*