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

+ RSA 99/2017

DOLLY SINGH

.....Appellant

Through: Mr.S.K.Bhaduri, Mr.Prem Prakash,
Ms.Shreyangana Bag and Ms.Neetu
Gupta, Advocates alongwith appellant

versus

GLOBAL SCHOLARS ACADEMY & GLOBAL CRICKET
ACADEMY & ORS

.....Respondents

Through: Mr.Virender Goswami, Ms.Swati
Goswami, Ms.Parkhi Singh and
Mr.Vedang Upadhyay, Advocates for
R-1 and 2

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **18.02.2025**

CM APPL. 6993/2018 (u/O-VI R-17 CPC)

1. The present application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the applicant/appellant seeking amendment in the captioned appeal.
2. Learned counsel for the appellant submits that by virtue of this application, the appellant seeks two amendments in the present appeal. Firstly, the order dated 04.02.2016, has been, inadvertently, mentioned as 14.02.2016. It is submitted that the other amendment as sought in the present application is to include in the prayer as to the challenge to the order dated 03.10.2015 passed by the learned Trial



Court, whereby, the application being moved by the appellant under Order VI Rule 17 CPC was dismissed. It is further submitted that Section 103 of the CPC is applicable in the present facts and circumstances. Learned Counsel has placed reliance upon the judgment passed by the Apex Court in the case of ***Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon***, 1969 SCC (1) 869, and in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.***, Civil Appeal No. 5909/2022 wherein the Apex Court *inter alia* held that necessary amendments which allow determination of real question in controversy and without causing prejudice to the other party shall be allowed.

3. Learned counsel for the respondents submits that as far as the correction of the date from 14.02.2016 to 04.02.2016 is concerned, the same may be allowed. However, the appellant may not be allowed to include the challenge to the order dated 03.10.2015 at this stage.
4. I consider that there is a substance in the submissions made by learned counsel for the respondents. The order dated 03.10.2015, was admittedly, not challenged before the learned first Appellate Court and thus, it cannot also be allowed to be challenged at this stage in the appeal. Even otherwise the order rejecting an amendment application is not appealable under the law.
5. The law on amendment is well settled. It *inter alia* provides that if an amendment is sought to be brought after commencement of trial, the Court must consider allowing the same if it believes that in spite of best efforts of the party the amendment could not have been brought



before the point of time, when it is actually being brought. In the present case, the applicant/appellant by way of an amendment application is seeking to challenge the order dated 03.10.2015 passed by the learned Trial Court. Admittedly the applicant/appellant did not challenge the order dated 03.10.2015 before the learned first Appellate Court and thus, it can be construed that he has acted without due diligence as the said order was well in the knowledge of the applicant/appellant even at the stage of First Appeal. On the face of the record, it is evident that despite being aware of order dated 03.10.2015 the applicant/appellant did not challenge the same before this Court as well and has now sought for an amendment by way of the present application. Therefore, allowing the present application at this stage, in a Second Appeal will cause grave prejudice to the other party.

6. The Apex Court in ***Kshitish Chandra Purkait v. Santosh Kumar Purkait and Ors.*** Civil Appeal No.4069/1997 *inter alia* held that generally speaking, an appellant is not be allowed to set up a new case in second appeal or raise a new issue (otherwise than a jurisdictional one).
7. Time and again, the Apex Court has emphasised certain factors that have been outlined for the application of Order VI Rule 17. The Apex Court in ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.*** has categorically laid down that the prayer for amendment shall be disallowed if it is *mala fide* and lacks due diligence on part of the party seeking amendment.
8. Before parting, it is imperative to mention that this Court is entrusted



with the power of determining issue of fact in a Second Appeal under Section 103 CPC only when the issue is not dealt with, by the Lower Appellate Court and/or by the Court of first instance. In the present case, admittedly the impugned order was not challenged before the Court of First Appeal which makes the plea here to be not maintainable.

9. In view thereof, the present application is allowed only to the extent that the typographical error as to the date of 14.02.2016 be corrected and read as 04.02.2016. Let the amended memo of plaint be filed.
10. The other amendment sought for incorporating the challenge to the order dated 03.10.2015 is rejected.
11. Accordingly, the present application stands disposed of.
12. It is made clear that the captioned appeal shall be heard and decided independently of the present order.

RSA 99/2017, CM APPL. 12425/2017 (Stay), CM APPL. 12427/2017 (u/O-XLI R-27 CPC) & CM APPL. 12428/2017 (u/O-VI R-17 CPC)

List on 30.07.2025.

DINESH KUMAR SHARMA, J

FEBRUARY 18, 2025

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