

Saleem Ahmad vs Smt. Kaushalya Devi (Deceased) Thr. Lr ... on 12 January, 2023

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 343/2022

SALEEM AHMAD

Through:

Mr. Dinesh Kumar, Ad

versus

SMT. KAUSHALYA DEVI (DECEASED) THR. LR SHRI

SUDARSHAN KUMAR JOSHI

..... Respondent

Through: Mr. Munish Chhoker and Ms. Jyoti Verma, Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% 12.01.2023 [The proceeding has been conducted through Hybrid mode]

1. The petitioner is challenging the impugned order dated 30.03.2022 in CS No. 2500/16 titled as 'Saleem Ahmed vs. Kaushalya Devi' passed by the learned Trial Court dismissing his application under Order VI Rule 17 of the Code of Civil Procedure, 1908.
2. Learned counsel for the petitioner submits that the amendment which was sought to the body of the plaint as well as to the prayer is with respect to property No.88/15, Gali No.1, Shakarpur, Delhi-110092 and the consequent reliefs arising thereof.
3. Learned counsel for the petitioner also submits that amendment as sought is at pre-trial stage and the admission/denial of documents and framing of issues is yet to be completed by the Trial Court.
4. Learned counsel on the aforesaid facts submits that the Trial Court ought to have provided the opportunity to amend the plaint and refers to the judgment dated 01.09.2022 passed by the Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. reported as 2022 SCC online SC 1128 to support his contention.
5. Per contra, learned counsel appearing for the respondent submits that the learned Trial Court has applied its mind to the amendment as sought by the petitioner and found that there was concealment of certain facts and certain other facts which were not available to be used as amendment in the present petition, were introduced clandestinely and purposely drafted vaguely.

6. Learned counsel for the respondent submits that a suit for ejecting against the petitioner qua property No. 90/1, Gali No. 1, Shakarpur, Delhi-110092 has been filed which is stated to be an adjoining property.

7. Learned counsel further submits that the said suit was resulted into an decree of ejectment which was challenged by the petitioner in an appellate proceeding whereafter by Regular Second Appeal which is stated to be pending before this Court.

8. Learned counsel submits that the said RSA is listed some time in February, 2023.

9. Learned Counsel, submits that there is no error or material irregularity in the procedural aspects of the manner in which the impugned order was passed and prays that the present petition may be dismissed with cost.

10. After hearing both the parties as well as perusing the documents on record and keeping in view the law laid down by the Supreme Court in LIC (Supra), it is clear from the facts on the record that the amendment as sought are pre-trial and no issues have been framed other than a preliminary issue and therefore no prejudice would be caused to the respondent if such amendments are allowed.

11. In terms of Supreme Court judgment in the case of LIC (Supra), any and all objections in respect of jurisdiction, limitation and other tenable objections which are available to the respondent may be raised by him in the preliminary written statement which needed to be filed after the present amendment is allowed.

12. In view of above and without prejudice to the rights and contentions of the respondent herein, the impugned order is set aside. The Trial Court is directed to take on record the amended plaint, and proceed in accordance with law.

13. The petition is disposed of as no order to cost.

TUSHAR RAO GEDELA, J JANUARY 12, 2023/ms