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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 23rd April, 2026**Date of Decision: 28th April, 2026*+ **CM(M) 656/2023 & CM APPL. 20448/2023**

MOHD. ASIF

.....Petitioner

Through: Mr. Dalip Kumar Santoshi and Mr.
Kali Charan, Advs.

versus

SMT. HAZRA

.....Respondent

Through: Mr. Nikunj Puri, Adv. alongwith
respondent-in-person.**CORAM:****HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA****ORDER**

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India, 1950, assailing the order dated 22nd March, 2023 passed by the learned Trial Court in Civil Suit No. 36/2017, whereby the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as '**CPC**'), filed on behalf of the petitioner/defendant seeking amendment of the written statement, has been dismissed.

2. I have heard the learned counsel for the parties and perused the record.

3. Learned Counsel for the petitioner has argued that the learned trial court has passed the impugned order on the basis of surmises and conjectures which is against the facts and law. It is contended that the amendments are required for effective adjudication of controversy between the parties and to



avoid multiplicity of judicial proceedings. It is further submitted that there is no inordinate delay in filing the application, as the same could not be moved earlier because of the head injury to the father of the petitioner, which had resulted in memory loss. Learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in *M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd. (2001) 8 SCC 97*.

Per contra, learned Counsel for the respondent/plaintiff has argued that the learned trial court has passed the impugned order after considering the material on record and there is no infirmity or illegality in the impugned order. It is contended that the application of amendment has been moved only to delay the trial. It is prayed that the present petition be dismissed.

4. In the application for amendment, the petitioner wants to amend the paragraph no. 3 of the preliminary objections and paragraph no. 2 of the reply on merits in the written statement.

In brief, the relevant facts of the case to decide the application are that the respondent had instituted a suit for possession, recovery of rent and damages against the petitioner in respect of the suit property, i.e., the ground floor of property bearing No. 0-32, Sunder Nagri, Delhi (hereinafter referred to as the '*suit property*'). It is contended in the plaint that the respondent is the owner of the suit property and the petitioner was inducted as a tenant therein. The petitioner has failed to vacate the suit property; therefore, the suit has been filed.

In the written statement, the petitioner, in paragraph no. 3 of the preliminary objections and paragraph no. 2 of the reply on merits respectively has submitted as under:



“3. That the defendant is in possession on the said suit property/shop No. 0-32, Sunder Nagri, Delhi since many years and no question arise for payment of rent to the plaintiff related to said suit property and said shop/suit property was constructed by the defendant by his own funds and there is no relationship of landlady and tenant between both parties and no question arise to create tenancy on the said shop by the plaintiff, hence according consideration of doctrine of preponderance of probabilities, said suit for possession is not maintainable.”

“2. That the contents of Para No. 2 of the plaint are wrong and denied because there is no relationship of landlady and tenant between both parties while defendant is carrying his business since many years on the said shop/suit property bearing No. 0-32, Sunder Nagri, Delhi.”

5. The proposed amendment in the aforesaid paragraphs as pleaded in the application by the petitioner reads as follows:

“Para no. 3 of the preliminary objections:-

That the defendant is in possession on the said suit property/ Shop No. 0-32, Sunder Nagari, Delhi since many years and he was purchased the said property from one Noor Biwi W/o Mohd. Islam on dated 07-05-1985 and relevant documents, General Power of Attorney, Agreement to Sale, Receipt and Will Deed were executed and the defendant constructed the said shop and is in lawful possession without any interference of any person/authority, hence, no question arise the relationship between the plaintiff and the defendant, landlady and tenant, while the plaintiff filed some forged documents to prove the ownership of the said property and no question arise to create tenancy on the said shop/ suit property by the plaintiff and never the plaintiff received the rent from the defendant.”



That the para no. 2 of reply on merit of written statement be read as amended para:-

“That the contents of para no. 2 of the plaint are wrong and denied. Because there is no relationship of landlady and tenant between both the parties while the defendant Mohd. Yaseen (Deceased) purchased the said suit property bearing no. 0-32, Sunder Nagari, Delhi from one Noor Biwi and constructed the shop and he is carrying his business since many years and all the documents of the ownership and electricity and water bill and house tax bill also filed in this suit later on as a list of document on dated 12-02-2018”

6. It would be apposite to refer to the provision under Order VI Rule 17 CPC dealing with amendments of pleadings, which reads as follows:

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The Hon’ble Supreme Court in (2024) 3 SCC 705 titled as **Basavaraj vs Indira & Ors**, has held as follows:

“10. The proviso to Order 6 Rule 17 CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of



trial. In the case in hand, this is not even the pleaded case of Respondents 1 and 2 before the trial court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of Respondents 1 and 2-plaintiffs.”

7. The suit was instituted in the year 2017. The application for amendment of the written statement was filed in the year 2022, when the case was already fixed for the evidence of the petitioner after the conclusion of evidence on behalf of the respondent. It is also relevant to mention herein that an application under Order VIII Rule 1A CPC was earlier moved on behalf of the petitioner to place on record the documents dated 7th May, 1985, which form the basis of the proposed amendments and the same was dismissed by the learned trial court *vide* order dated 3rd December, 2018.

8. In the written statement, the petitioner has taken the plea that he is in possession of the suit property and the respondent is not the owner of the suit property, as the same is DDA acquired land. However, by way of proposed amendment, the petitioner wants to take the plea that he is the owner of the suit property, having purchased the same from *Noor Biwi* on 7th May, 1985. This plea is totally inconsistent to the plea taken earlier in the written statement and allowing this plea would cause prejudice to the respondent.

9. Moreover, the facts which the petitioner now wants to bring on record by way of amendment were well within his knowledge at the time of the filing of the written statement. In the year 2018, petitioner also sought to bring these documents on record but that plea had been declined by the learned trial court



vide order dated 3rd December, 2018. Thereafter, the petitioner has waited for about four years to file this amendment application.

10. In view of the aforesaid discussion, this Court is of the opinion that the facts on the basis of which the amendments are sought were within the knowledge of the petitioner at the time of filing of the written statement. The filing of the amendment application by the petitioner at the stage when the case was fixed for his evidence shows that the petitioner was not due diligent as the amendments sought could have been raised prior to the commencement of the trial. Further, as discussed above, the proposed amendment would also cause prejudice to the respondent. Accordingly, this Court does not find any infirmity or illegality in the impugned order dated 23rd March, 2023 and the same is upheld. The present petition is dismissed as being devoid of any merits. Pending applications, if any, also stand disposed of.

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 28, 2026/ik