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

Date of Decision: 4th January, 2022

+ **C.R.P. 60/2020, CM APPLs. 22672/2020 & 22674/2020**

THARVINDER SINGH & ORS. Petitioners

Through: Mr. Prashant Diwan, Advocate.

versus

VIRESH CHOPRA & ANR. Respondents

Through: Mr. Akash Tomar, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. In the present revision petition, the Petitioners/Defendants (*hereinafter "Defendants"*) have challenged the impugned order dated 28th July, 2020 by which the application of the Respondents/Plaintiffs (*hereinafter "Plaintiffs"*) under Order VI Rule 17 CPC has been allowed and the application of the Defendants under *proviso* to Order VII Rule 11 CPC was dismissed in *CS No.610018/16* titled *Viresh Chopra & Ors. v. Tharvinder Singh & Ors.*
3. Vide the impugned order, the Plaintiffs were directed to file the amended plaint, on the next date of hearing or within 15 days upon resumption of normal hearing, whichever was later.
4. In the present revision petition, the Id. Counsel for the Plaintiffs seeks an adjournment today on the ground that the main counsel is not available. It is seen from the record that since inception, after notice was issued in this matter, the Plaintiffs have failed to appear before this Court. Service was

also effected in the matter and on 11th October, 2021, the Registrar records that both the Plaintiffs are well aware of the proceedings, they have been duly served, and they have chosen not to appear before the Court. On 8th November, 2021, Mr. Tomar, Id. Counsel appeared for the Plaintiffs and submitted that he would be filing his *vakalatnama* in respect of the Plaintiff's legal heirs, i.e., Respondent Nos.2A, 2B & 2C, however, till date the *vakalatnama* has not been filed. He appears again today and seeks further time to file the *vakalatnama*.

5. In the meantime, Mr. Diwan, Id. Counsel for the Defendants, submits that the suit itself has been dismissed in default as per the order of the Trial Court dated 22nd March, 2021. A copy of the said order has been emailed to the Court Master.

6. This Court has perused the said order and the record of the suit before the Trial Court. A background of these proceedings is as below.

7. Vide the Trial Court's order dated 14th September, 2018, the application filed by the Defendants under Order VII Rule 11 CPC was disposed of. One of the grounds in the said application seeking rejection of the plaint was on account of deficiency in payment of the Court fees by the Plaintiffs. The Trial Court in this order, had directed the Plaintiffs to pay the deficient Court fees in the following terms:

“23. The plaint filed by the plaintiff cannot be rejected on the ground of deficient court fees, however an opportunity is being provided to the plaintiff to pay the balance deficient court fees on the amount of Rs.1.75 Crore after making the adjustment of the court fee already filed with in a period of six weeks.

24. The application under Order VII rule 11

CPC filed by defendant is disposed of with the direction to the plaintiff to pay the court fees in terms of paragraph no.23 of the order failing which consequential order shall follow.”

8. On 3rd December, 2018, the Trial Court noticed that the Court fee was not paid by the Plaintiffs and the Plaintiffs had filed an application under Section 148 CPC seeking extension of time in depositing the said fees. The said application under Section 148 CPC was dismissed as withdrawn. On the same very date, the Plaintiffs were permitted to move an application seeking amendment of the plaint. The said application filed by the Plaintiffs under Order VI Rule 17 CPC, alongwith an application under *proviso* to Order VII Rule 11 CPC filed by the Defendants were again considered by the Trial Court, and decided in the impugned order dated 28th July, 2020.

9. Vide the said order, the amendment of the plaint was allowed and the application of the Defendants under *proviso* to Order VII Rule 11 CPC, which had sought rejection of the plaint due to non-compliance of the order dated 14th September, 2018, was dismissed. This order dated 28th July, 2020 is under challenge before this Court today. The impugned order reads as under:

“12. It is argued by Ld. Counsel for the defendants, since plaintiff did not pay the court fees within a period of six weeks and filed an application for extension of time on 27.11.2018 and during this interval i.e. after expiration of six weeks to 27.11.2018, it was an insufficiently stamped plaint and such a plaint cannot be considered as a plaint about Section 28 of Court Fees Act. In the opinion of this court, there is no automatic system of dismissal/rejection of plaint if the court fees are not filed within a stipulated

*period of time, rejection can only happen when the court passes an order. In the present case, plaintiff withdrew his application for extension of time on the premise that he is moving an application for amendment by which he seeks to abandon one of the reliefs and it is thereafter, application to proviso under Order 7 rule 11 CPC was moved by the defendant and once an application for amendment for abandoning the relief is pending, it cannot be said that there is no plaint before the court since an application for amendment usually relates back to the date of the filing of the suit and in the present case, amendment, as sought by the plaintiff, is neither time barred nor does it changes the nature of suit. Reference can be had to the judgment of in **Sampath Kumar V. Ayyakannu and Another, (2002)7 SCC 599.**] it was observed “an application for amendment once incorporated relates back to the date of the suit. It was also held that in appropriate cases, an amendment could relate to the date when application for amendment was moved.*

13. Amendment sought by plaintiff in the prayer clause in addition to the decree of specific performace in respect of suit property i.e. entire terrace on the second floor i.e. now third floor of the property bearing no. 7/3, South Patel Nagar, New Delhi in favour of the plaintiffs. Plaintiff sought money decree of Rs 87,70,000 in favour of the plaintiff against defendants. Prayer for refund is based on paragraph 4 of the plaintiff and it is being further elaborated by amending paragraph 20 of the plaint wherein plaintiff demanded refund of Rs 25,000,00 paid as an earnest money and the cost of construction of about Rs 35 Lakhs along with interest @ 6.5 percent annum in contrast to his earlier prayer where apart from decree of

specific performance of Contract, plaintiff has decree of Rs one Crores and Seventy Five Lakhs. The effect of such an amendment is the withdrawal of one of the reliefs by which plaintiff has claimed damages. However, if plaintiff seeks distinct reliefs and chooses to withdraw one of such a relief, then such a plaintiff cannot be ordered to pay Court Fee for the relief abandoned by him, under such circumstances, the plaintiff cannot be put to sanction in terms of consequences contemplated under proviso to Order VII Rule 11 CPC.

*14. Amendment prayed in the plaint were also opposed by defendants on the ground that same is time barred, however, bare perusal of amendment would indicate that same is not time barred as plaintiff is claiming for an alternative relief, in case court does not grant him the relief of specific performance and furthermore plaintiff has provided adequate justification that he is claiming an amount of Rs 35 Lakhs spent on the construction apart from recovery of advance money of Rs 25 Lakhs. Plaintiff has pleaded the said facts in paragraph 4 of his original plaint. Therefore, it cannot be said that relief sought by plaintiff is time barred and thus reliance placed by Counsel for the defendants on **T.N. Alloy Foundry Co. Ltd. Vs T. N. Electricity Board (2004)3 SCC 392** is misplaced in reference to the present case in view of the abovesaid discussion. **Ashutosh Chaturvedi Vs Prano Devi AIR 2008 SC 2171** is rendered on its own peculiar facts and furthermore, judgment has also referred **T.N. Foundary Limited (Supra)**. **Amarjeet VS Karnail Singh 1998 AIHC 3570** and **Nimmaraju VS Pottaraju and others 1997 AIHC 2135** is also not applicable as it is already held that that amendments sought are not time barred.*

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21. In view of the abovementioned discussion, Application under Order VI rule 17 CPC for amendment of plaint filed by plaintiffs is allowed and application under proviso to Order VII Rule 11 CPC filed by defendants for rejection of plaint is dismissed.”

10. Thereafter, the suit has been dismissed for default and non-prosecution vide subsequent order dated 22nd March, 2021. The said order reads as under:

“ Ld. Counsel for the defendants has submitted that the application of the plaintiff under Order 6 Rule 17 CPC for amendment of the plaint was allowed on 28.07.2020 but the plaintiffs even after passing of many months since then, have not filed the amended plaint.

Perusal of record shows that 15 days time for filing the amended plaint was granted to the plaintiffs after resumption of normal hearing of the Court. Perusal of order sheet dated 24.11.2020 further shows that since the physical filing was resumed, the plaintiffs were directed to file the same again on 23.12.2020 after supplying advance copy of the same to the defendants.

Therefore, in view of provisions of Order 6 Rule 18 CPC as the plaintiffs have failed to amend the plaint and considerable period of time has also been passed since then and there is no application for extension of time has been filed on behalf of the plaintiffs, the right of the plaintiffs to amend the plaint is hereby struck off. The order dated 28.07.2020 with respect to amendment of plaint has become ineffective and unoperative.

Perusal of record further reveals that there

is no appearance of the plaintiffs for the last 4 dates of hearing. Even, no one has appeared on behalf of the plaintiffs despite repeated calls since morning. It appears that the plaintiffs are not interested in pursuing the matter further. Accordingly, the present suit is hereby dismissed in default as well as for non-prosecution.”

11. A perusal of the above order shows that initially when the Plaintiffs were directed to deposit the Court fees vide order dated 14th September, 2018, they had moved an application under Sections 148 CPC seeking extension of time to deposit the Court fees, which was later dismissed as withdrawn. Further, the application for amendment of the suit was allowed and the Plaintiffs were required to file the amended plaint. The said amended plaint was not filed on several dates. The Plaintiff also did not regularly appear before the Trial Court. It is under these circumstances that the Trial Court dismissed the suit.

12. It is the settled position in law that once an application for amendment is allowed, in terms of the provisions of Order VI Rule 18 CPC, the plaint has to be amended. If the amended plaint is not filed within the stipulated time, the plaint cannot be amended thereafter, as also confirmed by the Supreme Court in *Union of India v. Pramod Gupta, (2005) 12 SCC 1*. The relevant extract is as below:

“40. It may be true that not only the memorandum of appeal but also the reference was amended. Mr. Rao pointed out that the necessary amendments have been carried out in the application for reference or memorandum of appeal. In terms of Order VI Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party who has obtained leave to

amend his pleadings within the time granted therefor and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order VI Rule 18 of the Code is that the party shall not be permitted to amend his pleadings thereafter unless the time is extended by the court. It is not in dispute that such an order extending the time specified in Order VI Rule 18 has not been passed.

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76. We have noticed hereinbefore that the amendments have not been carried out in the pleadings in terms of Order VI, Rule 18 of the Code of Civil Procedure. The said provision being mandatory, if not complied with the consequences flowing therefrom shall ensue.

13. Even in ***Azad Khan v. Riyajuddin [Second Appeal No. 288 of 2017, decided on 21st March, 2017]***, the Allahabad High Court upheld dismissal of a suit, when the plaintiff had not filed the amended plaint despite repeated opportunities and had subsequently not appeared before the Court. The Court held as under:

“15. Admittedly, the plaintiff was not attending the Court and he did not comply the order dated 16.1.2015 to amend the memo of the parties. If the plaintiffs do not want to pursue his suit, they cannot be compelled to contest the case. The submission of learned counsel for the appellants that the appellate court has wrongly held that counter claim of the appellants has been rejected, I find that the said submission has no force.

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17. I find that both the courts below have rightly recorded the findings that the appellants have no

locus as the memo of parties was not amended by the plaintiff and he was not present on the date fixed. In his absence the trial court has rightly dismissed the suit. Order 6, Rule 18 C.P.C. provides that if a party fails to comply the direction of the Court and does not amend in terms of order of the Court, he shall not be permitted to amend after expiry of the time allowed by the Court. For the sake of convenience the said provision is quoted below:

"18. Failure to amend after Order. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be unless the time is extended by the Court."

18. On a plain reading it becomes clear that if a party has failed to comply the order within the time frame, he shall not be permitted to carry out the amendment. Of course the Court has power to extend the time. In this case no application was moved by the plaintiff for extension of time. As noted above the plaintiff was not present on the dates fixed. The provision of Order 16, Rule 18 was inserted by Act 22 of the 2002. The intention of the legislature is clear that there should not be delay in deciding the suit by taking recourse to delaying tactic."

14. In the present case also, the Trial Court has dismissed the suit both for want of amended plaint as also for non-prosecution. Clearly, in view of this fact, in this revision petition no further orders would be called for.

15. Accordingly, the present petition along with all the pending applications is disposed of as infructuous.

16. It is however made clear that if the Plaintiffs seek restoration of the suit before the Trial Court, various non-compliances of the orders passed under Order VI Rule 17 CPC and under *proviso* to Order VII Rule 11 CPC shall be taken into consideration by the Trial Court as also the objections of the Defendants shall be considered prior to allowing any restoration of the suit. If any orders are passed in the said suit by the Trial Court, the remedies of the Defendants in respect of the impugned order are also be left open, if such a need arises.

17. It is also made clear that the disposal of this petition or the dismissal of the suit before the Trial Court for non-prosecution shall not, in any manner, affect the rights of the Plaintiffs to avail of their remedies in accordance with law, if the same is permissible.

18. A copy of this order be sent to the Court of Ld. ADJ, West District, Tis Hazari Courts, Delhi in ***CS No.610018/16.***

**PRATHIBA M. SINGH
JUDGE**

JANUARY 4, 2022/Aman/MS