

**Shri Hans Raj and anr Vs. Shri Ajit Singh and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1167089](http://sooperkanoon.com/1167089)

**Court :** Delhi

**Decided On :** Oct-30-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Shri Hans Raj and anr

**Respondent :** Shri Ajit Singh and ors

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + % CM(M) No.432/2014 30th October , 2014 SHRI HANS RAJ & ANR Through: ..... Petitioners None. versus SHRI AJIT SINGH & ORS Through: ..... Respondents None. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. No one appears for the petitioners although it is 12.15 PM. I have gone through the record and therefore am proceeding to dispose of the petition. I may note that this matter was listed on two earlier dates when at the request of the petitioner the matter was adjourned and which dates are 29.4.2014 and 15.5.2014.

2. By the impugned order dated 4.4.2013 the application of the respondent/plaintiff filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) whereby the respondent/plaintiff wanted to claim enhanced damages has been allowed. The relevant observations of the trial court while for allowing of the application

read as under:

8. Qua 1st objection: that the time limit for filing this application was 14 days from the date of the order of Honble High Court and that the amendment is barred by limitation being filed approximately after one year from the date of the order. Amendment deleting the relief of possession already stands allowed by the order dated 28.10.08 passed by Honble High Court. After this order plaintiff was not required to move any amendment application afresh in view of the fact the same stood allowed by the above mentioned order. Plaintiff was only liable to file an amendment plaint in view of the said order. In view of the same, the objection raised by Ld. Counsel for defendant no.2 is devoid of merit.

9. Qua 2nd Objection: Vide order dated 28.10.08, Honble High Court plaintiff was directed to confine his relief qua mesne profits only. There is no observation or restriction imposed by the order of Honble High Court as to the quantum of mesne profit/damages/misuse charges which the plaintiff is entitled to claim at that stage or at any subsequent stage.

10. Qua 3rd Objection: the defendant no.2 himself was impleaded when the suit was at the stage of defendants evidence on his application Under order 1 Rule 10 CPC as allowed by the order of Honble High Court dated 21.10.08. After, his impleadment, the suit qua defendant no.2 is relegated back to the stage of the pleadings. In view of the same, the objection raised by Ld. Counsel for defendant no.2 is without any merit. xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx 14. Amendments have to be allowed to avoid uncalled multiplicity of litigation; they should be viewed with a liberal approach and delay may not be a ground for refusing a prayer for amendment, if the merits of the case so demands. As long as no prejudice is suffered by the nonapplicant, the Court should be liberal in allowing the amendment.

15. It is settled proposition of law that an amendment should generally be allowed, unless it is shown that permitting the amendment would be unjust and would result in prejudice to the opposite party which cannot be compensated by cost or would deprive him of a right which was accrued to him with the lapse of time. Errors of mistakes, if not fraudulent, should not be made a ground for rejecting the

application for amendment of plaint or written statement. If there is no undue delay, no inconsistent cause of action is introduced and no vested interested or accrued legal right is affected and the application for amendment is not mala fide or will not prejudice the opposite party, the amendment should ordinarily be allowed.

3. I do not find any error in the impugned order because by claiming a particular amount of higher damages, and which will have to be proved during the trial in accordance with law, any grave prejudice is caused to the petitioner/defendant. Trial court has rightly concluded that in facts of case such as the present amendment application is to be liberally considered. No grounds are made out for exercise of extraordinary and discretionary jurisdiction under Article 227 of the Constitution of India for interfering with the impugned order.

4. Dismissed. OCTOBER30 2014 ib CMM4322014

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