



2025:DHC:5119



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

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Reserved on: 25th February, 2025**Pronounced on: 1st July, 2025**

CM(M) 1065/2022 & CM APPL. 43909/2022 STAY

NIMISHA BHAGAT

....Petitioner

Through: Mr. Manish Gandhi, Ms.
Rishika Nagpal and Mr.
Suyash Pandey, Advs.

versus

RASHI MISRA

.....Respondent

Through:

CORAM:-**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is a petition under Article 227 of the Constitution of India, seeking to set aside the impugned order dated 26.07.2022, passed by learned SCJ-cum-RC, Karkardooma Courts, Delhi in CS No. 187/2020, titled as "*Nimisha Bhagat Vs. Rashi Misra*", whereby, the learned trial court dismissed the application under Order 6 Rule 17 of the Code of Civil Procedure ["CPC"], filed by the petitioner herein.

2. Shorn of all the unnecessary details, suffice to mention that petitioner filed a Suit for Recovery of friendly loan advanced to the respondent. Prior to the issue of summons to the respondent, the court below framed a preliminary issue on the limitation. While the case



was fixed for arguments on the said preliminary issue, petitioner filed an application under Order 6 Rule 17 CPC for the amendment of the plaint stating that petitioner found an old diary maintained by her in the ordinary course, wherein, she had made certain entries regarding the dates on which the loan was advanced to the respondent. The diary allegedly contains the professional notes prepared by the petitioner. She filed the relevant extract of the diary with the list of documents. By virtue of the application, petitioner sought to incorporate the correct dates of advancement of loans on different dates and make consequential amendments in paras No. 2, 4, 7 & 17 of her plaint.

3. Trial Court heard arguments on both counts i.e. preliminary issue as also the application under Order 6 Rule 17 CPC and passed a common order dated 26.07.2022. The court found the suit to be within limitation and directed that summons be issued to the respondent/defendant but dismissed the application for amendment. Petitioner impugns only the part of the said order, whereby, the application under Order 6 Rule 17 CPC was dismissed. The relevant extract of the impugned order is reproduced below:-

“Perusal of the application shows that plaintiff trying to bring exact dates of loan on record on the ground that the same could not be brought on record earlier due to inadvertence and clerical omission. It is stated that during the search of old record on 01.03.2020 maintained in the ordinary course of day to day affairs, plaintiff came across the specific dates of loans. Perusal of the accompanied document does not show that it is a bound diary and maintained in the ordinary course of day to day affairs. It is a copy of calendar. The present amendment has been filed by the plaintiff only after the matter has been put up for seeking clarification on the point of limitation. Thus, it seems that plaintiff deliberately trying to amend the petition to support his case on the point of limitation. So , proposed amendment is an afterthought and is not



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necessary for effective adjudication of the dispute between the parties. So, application under Order VI Rule 17 r/w Section 151 CPC is dismissed. Amended plaint is directed to be effaced from the record.”

4. Learned counsel for the petitioner submits that the aforesaid order dated 26.07.2022 is illegal and perverse. It is submitted that while considering the question of amendment of pleadings, the court is not to look into the merits or demerits of the proposed amendment and more so when the case is at a very initial stage i.e. even the summons were not issued to the defendant. It is submitted that the court below erred in observing that the document diary is not a bound diary or that it is not looking to be maintained in the ordinary course. It is stated that the list of documents annexed with the application for amendment and the list of reliance prove otherwise. It has been very specifically mentioned in the list of documents that the relevant extract of the “bound diary” is being filed and further that the original diary would be produced later. It is further argued that the trial court erred in holding that amendment application is filed to circumvent the issue of limitation. There was no occasion for the petitioner to circumvent the said issue especially when the suit was within limitation even from the original plaint. The inference drawn by the trial court was without any basis, and therefore, no such observation could have been made without taking evidence on record. It is also argued that as per settled law, the amendment application should be considered liberally and the court should not go into the merits/demerits of the amendment. It is argued that petitioner shall suffer serious prejudice in case the proposed amendments are not permitted.



5. Notice of petition was sent to the respondent. One Mr. Om Prakash, Advocate appeared on behalf of the respondent on 24.03.2023, but no one appeared for the respondent since thereafter. Court Notice was also sent to the respondent, but despite the service of court notice, no one turned up for her. The court, therefore, does not have the benefit of hearing arguments from the side of the respondent.

6. Order 6 Rule 17 CPC pertains to the amendment of pleadings in a civil suit, which reads as under:-

“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.”

7. The law with regard to the amendment of pleadings is well-settled by now. Order 6 Rule 17 of the Code which deals with the amendment of pleadings, provides that the Court may, at any stage of proceedings, allow either party to alter or amend its pleadings in such a manner or 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 question in controversy between the parties. From a bare perusal of this provision, it is clear that Order 6 Rule 17 consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend the pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies between the parties. Wide powers



and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of the suit can be avoided and the suit can be disposed of expeditiously. It is also a settled law that amendment of the plaint can be made at any stage of the suit, even at the second appellate stage.

8. The Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. 2022 SCC Online SC 1128**, after considering the various decisions of the Supreme Court and the High Court regarding the amendment of pleadings culled out the principles dealing with the applications under Order 6 Rule 17 of the Code, which are extracted below:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC. (iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,



(b) by the amendment, the parties seeking amendment does not seek to the other side and withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment,



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the amendment is required to be allowed. Equally, where the is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

(See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897).”

9. Coming to the facts of the present case, as narrated in the plaint, respondent had approached the petitioner sometime in the early part of the year 2014 for a friendly loan. At his request, petitioner lent an aggregate amount of Rs. 90,000/- to the respondent on different dates during the year 2014 on the assurance of the respondent that she would repay the same latest by mid of the year 2015. In her application under Order 6 Rule 17 CPC, petitioner submits that due to sheer inadvertence and clerical omissions, the specific dates and months of the respective payments of loan to the respondent could not be mentioned. It was only during the search of the old record on 01.03.2020, maintained in ordinary course of day to day affairs, that the petitioner came across specific dates/months of the respondent approaching the petitioner that is early part of the year 2015 and also lending of the loan, including earlier loan of Rs. 5000/- paid on 09.12.2014 to her and thus the petitioner wishes to mention the dates/months of lending the loan to the respondent, as follows:-

- a. Payment of Rs.5000/= on 19/12/2014;
- b. Payment of Rs.50000/= on 05/03/2015;
- c. Payment of Rs.25000/= on 10/03/2015;
- d. Payment of Rs.10000/= on 15/03/2015.



10. It has been submitted that petitioner had inadvertently mentioned in her plaint that defendant had approached her in early part of the year 2014, though, in fact, the respondent had approached her in early part of the year 2015 for a loan of Rs. 1,00,000/- on the pretext of acute financial constraints and immediate requirements. In view thereof, petitioner seeks permission to amend the plaint to the relevant extent by incorporating the following averments:-

“A. Para 2: - That in continuation and furtherance to an earlier loan of Rs.5000/- taken by the defendant on 19/12/2014 from the plaintiff, she approached the plaintiff again sometime in early part of the year 2015 and asked for a further friendly loan of Rs.100000/- (Rs. One lac only) for defraying expenses pertaining to her mother's treatment, disputes with landlords, legal action against neighbours, treatment of her pets and rescued animals, and also from moving t from one home to another.

B. Para 4 - That owing to their friendship and empathising with the defendant's situation, the plaintiff lent whatever possible loan amount as follows under the assurance of the defendant that she would repay the same latest by the mid of the year 2015: -

- a. Payment of Rs .5000/- on 19/ 12/2014;
- b. Payment of Rs.50000/- on 05/03/2015;
- c. Payment of Rs .25000/- on 10/03/2015;
- d. Payment of Rs.10000/- on 15/03/ 2015 .

C. Para 7: - That on 15/05/2015, the defendant unequivocally, acknowledged taking Rs .90000/- (Rs . Ninety thousand only) in aggregate from the plaintiff and reassuring the repayment, the defendant reiterated her acute financial constraints and sought to make the repayment in a unilaterally decided period of 24 months i.e. by 31/03/2017.

D. Para 17: -The cause of action had accrued to the plaintiff on the respective dates of the extension of loan, as stated in Para 4A above and also on the assurance of the defendant to repay the same latest by the mid of the year 2015 and later unilaterally extending the same to 24 months i.e. by 31/03/2017.”

11. Learned trial court rejected the request for amendment on the ground that application was moved after clarification on the point of



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limitation had been sought. Simultaneously, learned trial court observed that amendments were not necessary for the effective adjudication of disputes between the parties. Apparently, both findings are mutually contradictory. The trial court had framed a preliminary issue with regard to the limitation. Before any finding was returned on the said issue, petitioner filed an application under Order 6 Rule 17 CPC for amendment of the plaint. Petitioner was within his rights to file such an application provided the amendments were necessary for the purpose of determining the real question in controversy between the parties. Amendment application cannot be rejected merely because the court was already considering the question of limitation and the amendment sought would support the case of the petitioner on the point of limitation. In the case of **Sukriti Dugal Vs. Jahnvi Dugal & Ors. CS(OS) 649/2018, dated 23.09.2019**, the Coordinate Bench of this Court was dealing with the contention regarding the maintainability of the application under Order 6 Rule 17 CPC filed pursuant to the defendant's application seeking rejection of the plaint under Order 7 Rule 11 CPC. Dealing with the said contention, the Court held as under:-

“7. Firstly, let me deal with the contention regarding the maintainability of the application under Order 7 Rule 11 CPC, 1908. Defendant no. 3 contends that the Court is precluded from entertaining an application under Order 6 Rule 17 once it is seized of an application under Order 7 Rule 11. On this proposition, the position of law is settled. The Division bench of this Court has in the case of Mrs. Anita Kumari Gupta v. Late Mr. Ved Bhushan and Ors, (2014) 5 SCC Online Del 2895 has held as under:-



“11. We are not only unable to agree with the reasoning given by the learned Single Judge for allowing the application of the respondents/defendants under Order VII Rule 11 CPC and in the facts aforesaid, do not find any ground for rejection of the plaint to have been made out but are also of the view that the order is erroneous also for dealing first with the application under Order VII Rule 11 CPC, when an application filed earlier in point of time for amendment of the plaint was pending consideration. We are of the opinion that once an application for amendment of the plaint has been filed, even if after the filing of an application under Order VII Rule 11 CPC, ordinarily the application for amendment of the plaint is to be considered first and it is only thereafter, if the amendment were to be refused, that the application for rejection of the plaint as originally filed, is to be considered; needless to state that if the amendment is allowed, it has to be seen, whether the ground on which rejection is sought survives. It was so held by this Court as far back as in Wasudhir Foundation Vs. C. Lal & Sons 45 (1991) DLT 556 by aptly observing that Courts allow amendments, not really as a matter of power but in performance of loftier duty to deliver substantial justice and the ouster of Order VI Rule 17 CPC will throttle the very life line of Order VII Rule 11 and instead of promoting, would defeat the ends of justice. Alas, neither counsel cited the law before the learned Single Judge or before us.

(Emphasis supplied)

8. The ratio of the aforesaid decision is clear that once an application for amendment of the plaint has been filed even if, after the filing of an application under order 7 Rule 11 CPC, ordinarily the application for amendment is to be considered first and only thereafter, if the amendments were to be refused, the application for rejection of the plaint as originally filed is to be considered. If the amendment is allowed, then it has to be seen whether the grounds urged in the application seeking to reject the plaint would still survive. Thus, the filing of the application for amendment, subsequent to the filing of the application for rejection of plaint is immaterial and cannot be a ground to reject the application.”

12. Applying the above principles, filing of an application for amendment subsequent to the matter being listed for seeking clarification on the point of limitation, is immaterial, and cannot be a ground to reject the application merely because such amendment



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would support the petitioner's case on the point of limitation, moreover, when the trial court itself was of the view that the suit was within limitation even from the original complaint.

13. The observation of the trial court that document diary is not a "bound diary" or that the same was not looking to be maintained in the ordinary course, appears to be perverse, inasmuch as, petitioner had only placed the relevant extract of the bound diary before the court. The inference drawn by the trial court is thus without any basis. It is a settled law that while considering whether the amendment is to be granted or not, the court does not go into the merits of the matter and decide whether or not the claim made therein is bona fide or not. That is a question which can only be decided at the trial of the case. The amendment application filed under Order 6 Rule 17 CPC should normally be allowed unless by virtue of the amendment, the nature of the suit is changed or any prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by granting amendment application because the suit was for recovery and petitioner simply wanted to incorporate the dates of the loan transactions, which according to her, were inadvertently not mentioned in the plaint.

14. The amendment application has been filed by the petitioner even prior to the issue of summons of the suit. Pre-trial amendments are to be allowed liberally. Respondent shall not be prejudiced because she will have an opportunity to rebut the amendment sought to be made.



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15. For the aforesaid reasons, the Court is of the view that the amendment application should not have been rejected by the trial court. Petition is therefore allowed with direction to the trial court to permit the petitioner to amend the plaint, as prayed for in the amendment application.

16. There is no order as to cost.

17. Pending application(s), if any, shall stand disposed of.

RAVINDER DUDEJA, J.

1st July, 2025
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