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**(1989) 08 DEL CK 0039**

**In the Delhi High Court**

**Case No :** Interim Application No. 8543 of 1988 and Suit No. 1139 of 1985

J.K. Churamani

APPELLANT

Vs

Escorts Ltd. and Others

RESPONDENT

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**Date of Decision :** 01-08-1989

**Acts Referred:**

**Citation :** (1989) 39 DLT 380 : (1990) 60 FLR 119

**Hon'ble Judges :** P.N. Nag, J

**Bench :** Single Bench

**Advocate :** L.C. Goyal and V.P. Arya, for the Appellant;

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## **Judgement**

P.N. Nag, J.

(1) In this application under Order 6 Rule 17 read with Section 151 of the CPC and Section 40 of the Specific Relief Act. 1963 the plaintiff seeks an amendment of the plaint with a view to claiming of an additional relief of payment of damages to him of a sum of Rs. 4.91.793.00 (details given in the application) alternatively and consequent amendment to that effect in certain, paragraphs of the plaint.

(2) The brief facts set out in the plaint are that plaintiff while was working with defendants as General Manager, his services were terminated by the defendants vide order dated 25th May, 1984 with immediate, effect In lieu of three months notice, he was given three months pay in the form of a cheque of Rs.13,920.00 . The service of the plaintiff appears to have been terminated on the ground that he wanted to set up a parallel business for which he had gone on long leave. However, his services were allegedly terminated in accordance with the appointment letter and also on he ground that his services were no longer required. The plaintiff has challenged the impugned order on the various grounds that the order of termination dated 25th May, 1984 has not been passed by Mr. Anil Nanda, Joint Managing Director of the Automotive Division under whom he was working. The impugned order is also bad being opposed to the principles of

natural justice; being based on extraneous and irrelevant considerations and in breach of the implied terms of contract of employment; apart from being arbitrary, capricious and malicious. This order of termination dated 25th May, 1984 terminating the plaintiffs' services was subsequently confirmed by letter dated 7th September, 1984. The order being void, the plaintiff asserts and seeks declaration to the effect that he continues to be in the service of the company and is entitled to all consequential benefits and also perpetual mandatory injunction directing the defendants to reinstate the plaintiff retrospectively. The plaintiff submitted and strongly that in the facts and circumstances of the case when the plaintiff applies for damages in a suit where perpetual injunction has already been asked for whether the Court has no power to refuse such an amendment. In this connection he relied upon Section 40 of the Specific Relief Act which may be reproduced as under :- " Damages in lieu of, or in addition to injunction : (1) The plaintiff in a suit for perpetual injunction u/s 38, or mandatory injunction u/s 39, may claim damages either in addition to, or in substitution for such injunction and the court may, fit thinks fit, award such damages. (2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint : Provided that, where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding allow the plaintiff to amend the plaint on such terms as may be just for including such claim. (3) The dismissal of a suit to prevent the branch of an obligation existing in favor of the plaintiff shall bar his right to sue for damages for such breach."

(3) The section aims at preventing multiplicity of suits and compels plaintiffs to sue for all possible reliefs in respect of breaches, actual or threatened of obligations, existing in their favor, in one and the same suit on pain of forfeiting their rights to sue for damages by bringing another suit in respect of the infringement of their rights, and that is why the option has been given to the plaintiff either in addition to or in substitution for injunction to apply for amendment for payment of damages. It is for this reason that the word "shall" has been used in contradiction to the word "may" used under Order 6 Rule 17. The proviso further shows that howsoever belated the request for amendment may be and even if the claim put forward by way of amendment is hopelessly barred by limitation it is imperative for the Court to allow the amendment. I am fully fortified in reaching this conclusion in a case reported in Jagdish and Others Vs. Har Sarup, : "Whereas under Order 6 Rule 17 of the CPC the Court has a discretion, the proviso to sub-section (2) makes it imperative for the court to allow the amendment. It is for that reason that the word "shall" has been used in contradiction to the word "may" used under Order 6 Rule 17. The proviso further shows that howsoever belated the request for amendment may be and even if the claim put forward by way of amendment is hopelessly barred by limitation it is the bounden duty of the court to allow the amendment."

(4) The counsel for the defendants, however, on the other band vehemently opposed the application and submitted that the amendment sought for will

change the very nature of the suit and set up a different case altogether and such an amendment should not be permitted. There is no substance in this submission as by asking alternatively for additional relief for payment of damages, character of the suit is not fundamentally altered nor could the defendants be taken by surprise.

(5) Another submission of the learned counsel for the defendant that this amendment is intended to delay the proceedings and decision of the suit and is belated one is also devoid of force as the suit is at preliminary stage and no prejudice will be caused to the defendants if the amendment is allowed at this stage as the fact remains that all such reliefs arise out of termination of services.

(6) Under Order 6 Rule 17 all amendments ought to be allowed which satisfy the two conditions (a) : of not working injustice to the other side and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. In this present case, the amendments sought for are necessary for the purpose of determining the real question of controversy between the parties, and it will not work injustice to the other party if the amendment is allowed. Therefore, in these facts and circumstances of the case there should be no objection for allowing such an amendment.

(7) In view of this, the amendment as prayed for the plaintiff is allowed subject to payment of costs of Rs. 500.00 to the defendant.