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**Date:** 08/11/2025

**(2012) 05 DEL CK 0614**

**Delhi High Court**

**Case No:** CM (M) 737 of 2011 and CM No. 12044 of 2011

Harjeet Kaur Oberoi — APPELLANT

Vs

Anil Puri and Others — RESPONDENT

**Date of Decision:** May 8, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** S.K. Bhalla, for the Appellant; Rajat Aneja, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Indermeet Kaur, J.

1 Order impugned before this Court is the order dated 19.04.2011 vide which the application filed by the plaintiff under Order 6 Rule 17 of the CPC (hereinafter referred to as the "Code") seeking an amendment in his plaint had been declined. Contention of the petitioner is that this order suffers from an illegality; contention being that the amendment application had been filed within a span of less than one month from the date of original filing of the plaint and no prejudice would have been suffered by the defendant in case the amendment would have been allowed; further contention being that the law of amendment is liberal. To support his submission, reliance has been placed upon Ganesh Trading Co. Vs. Moji Ram, as also Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, . There is no doubt to the proposition that the law of amendment is to be liberally construed and if a party or its counsel is insufficient in setting out its case initially the shortcoming can be removed by appropriate steps. However in this case, the submission of the petitioner that the amendment sought for is only because of an improper drafting in the plaint which is because of the shortcoming of the Advocate is without any merit.

2. Record shows that the original suit was a suit for permanent and mandatory injunction wherein the plaintiff (Harjeet Kaur) had stated that she is living in the disputed premises as a tenant i.e. 16/61-62, street No. 2, Faiz Road, Karol Bagh, New Delhi at a monthly rental of Rs.800/- which was thereafter enhanced to Rs.3,200/- per month and the rent is being paid to Ranjeet Singh. Written statement was filed. In this written statement contention was that the rate of rent is Rs.3,520/- per month which has been enhanced from Rs.3,200/- per month; the plaintiff is not entitled to any relief.

3. After the filing of the written statement, the aforenoted application seeking amendment of the plaint was filed on 01.05.2010; contentions now raised in the amendment application were to the effect that there were in fact four co-tenancies created by the plaintiff in favour of the tenants which were for four separate portions and rate of rent of each of the tenanted portion was Rs.800/-; that is why Rs.3,2000/- was being paid. Contention being that on the eastern portion, Mr. M. Singh was living; Harjeet Kaur and Suresh Kumar were occupying the western side and so also the other portions. However, contention being that no separate rent receipts for four separate tenancies were given and a consolidated receipt of Rs.3,200/- was being issued.

4. In this background, the prayer made by the petitioner had been considered and rejected and in view of this Court rightly so.

5. There is no doubt that the law of amendment has to be liberally construed and if no prejudice is suffered by the opposite party, amendment by and large should be permitted. At the same time, the Court must bear in mind that the nature of the suit must remain the same and the plaintiff should not be permitted to take away a right which has accrued to the defendant. The plaintiff in the instant case has admitted that she is a tenant at a monthly rent of Rs.3,200/-; the case of the defendant is that the statutory rent has been enhanced from Rs.3,200/- to Rs.3,520/- taking it outside the purview of the Delhi Rent Control Act. It was for this reason that the aforenoted application was filed alleging four separate and different tenancies of Rs.800/- each. In this background, the impugned order declining the amendment suffers from no infirmity. It does not call for any interference. Petition is without any merit. Dismissed.