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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

# CNR No. DLHC010339462026

+ CM(M) 1649/2026, CM APPL. 48956/2026, CM APPL. 48957/2026  
CM APPL. 48958/2026 & CM APPL. 48959/2026

BUDH PRAKASH

.....Petitioner

Through: Mr. Phillip Massey, Mr. Rajeev  
Kumar and Mr. Dev Suman  
Mohanpuria, Advocates.

versus

M/S. INDASO CONSTRUCTION PVT LTD &  
ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

**JUDGMENT (ORAL)**

% 30.07.2026

1. The present petition under Article 227 of the Constitution of India, impugns the order dated 02.06.2026, passed by the learned District Judge (Commercial Court), North-East District, Karkardooma Courts, Delhi in CS (COMM) No. 91/2024 titled as '*Budh Prakash v. M/s Indaso Construction Pvt. Ltd. & Ors.*', whereby application under Section 153 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), filed by the petitioner/plaintiff, for correction of the description of respondents/defendant No. 2 and 3, was dismissed.
2. The facts relevant for the purpose of adjudication are, that the petitioner instituted a commercial suit for recovery of Rs. 49,00,000 along with pendente-lite and future interest against the respondents.
3. In the original plaint, respondent No. 2 was described as "*M/s. Tejus*



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*Water Solution Pvt. Ltd. through its Prop. Mr. Umesh Kumar Sagar"* and respondent No. 3 was described as *"M/s. Creole Incorporation through its Prop. Mr. Himanshu Marwal"*.

4. On 08.05.2026, after the evidence was concluded, the petitioner moved an application under Section 153 read with Section 151 of the CPC, seeking correction of the description of respondents No. 2 and 3 in the memo of parties. The petitioner asserted, that respondents No. 2 and 3 are sole proprietorship concerns; and not private companies, and therefore, the memo of parties ought to be corrected to reflect the legal status of these concerns, along with the names of the respective proprietors, namely Mr. Umesh Sagar, for respondent No. 2 and Ms. Sangita Marwal, for respondent No. 3.

5. The learned Trial Court, *vide* the impugned order dated 02.06.2026, dismissed the said application, observing that the application was moved at a belated stage, and that the same appeared to have been filed to fill lacunae in the case. The relevant portion of the impugned order reads thus:

“The averments made by the defendants appear to be correct as the defendants in the written statement itself made averments regarding the capacity of the defendants but no action was taken by the plaintiff at the appropriate stage.

The application is filed on the highly belated stage and appears to be filed to delay the legal proceedings. Accordingly, the application under Section 153 read with section 151 CPC as filed on behalf of Plaintiff stands dismissed.”

6. Learned counsel for the petitioner submits, that the application moved before the learned Trial Court under Section 153 of the CPC, was confined to rectifying a procedural misdescription in the memo of parties. It is submitted, that respondents No. 2 and 3, being sole proprietorship concerns, do not have a separate legal entity distinct from the proprietors. Therefore,



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describing the respondents through the respective proprietors, does not amount to bringing in new parties or filling lacunae.

7. It is further submitted that, inaccuracies in the description of parties should not be allowed to impede the substantive determination of the real questions in controversy.

8. This Court has heard the learned counsel and perused the material on record.

9. In the present case, the suit before the learned Trial Court has already progressed to its final stage.

10. The impugned order reflects, that the petitioner was aware of the capacity of respondents No. 2 and 3, given that averments regarding the same, were incorporated in the Written Statements. Despite being put on notice due to such Written Statements, the petitioner did not seek any rectification, and allowed the trial to culminate in the closure of evidence.

11. A perusal of Section 153 of the CPC, indicates that while the Court possesses general power to amend any defect or error in any proceeding to determine the real question in controversy, such power cannot be invoked to rescue the petitioner, who has slept over his rights despite being put on notice as to the capacity of the parties. The aforesaid provision is reproduced hereunder:

153. General power to amend.—The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

12. The amendment sought by the petitioner, seeks to replace the name of



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a private company with that of a sole proprietorship, while simultaneously swapping the name of a proprietor with the name of a third party. The same exceeds the scope of rectifying a formal defect or verbal slip under Section 153 of the CPC.

13. This Court in the case of *Raman Sharma v. Prem Lata Prabhakar* 2024 SCC OnLine Del 9404 held that, not only does Section 153 apply only to verbal slips and defects, but also, that the general powers of amendment under Section 153 of the CPC yield to the specific rules laid down in Order VI Rule 17 of the CPC. In light of this, amendments which alter the nature of the suit, such as the amendment sought by the petitioner herein, are not permissible. The relevant portion of the aforesaid judgment reads thus:

“62. From a comprehensive analysis of the aforesaid judgments, it is clear that **Section 153 CPC only pertains to amending any defect or error in any proceeding in a suit**. Any proceeding in a suit has been succinctly restricted to filings made by a party to the suit in pleadings, applications, etc. Thus, it amounts to steps taken by the parties in legal action.

63. In a way, Section 153 CPC, though wider in nature, may seem akin to the powers granted under Order 6 Rule 17 CPC which allows the amendment of pleadings on an application by parties to a suit, but has a subtle distinction in being limited to correction in proceedings and **not to correct substantive errors in pleadings** and orders for which there exist detailed procedures.

65. This Court in its Full Bench decision in *Kedar Nath v. Ram Prakash*<sup>31</sup>, observed that the **general powers of amendment under Section 153 CPC, 1908 must yield to the specific rule i.e. Order 6 Rule 17 CPC, 1908 when it relates to amendment of pleadings**. Order 6 Rule 17 CPC, 1908 should be invoked where amendment of pleadings is sought. Further, Section 153 CPC, 1908 speaks of the power of the court to make amendment suo moto and can, therefore, **be applied at best only to verbal slips or defects**. A pleading can be amended under Order 6 Rule 17 CPC, 1908 only during the pendency of the proceedings. Even after judgment, Section 153 CPC, 1908 can be invoked for correcting errors in the proceedings in the suit other than the pleadings i.e. a memorandum of appeal, etc.”



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14. Relying on the aforesaid case, the amendment sought by the petitioner cannot be permitted, as permitting the same at this belated hour, would alter the nature and character of the suit, *qua* respondents No. 2 and 3.
15. In view thereof, this Court finds no infirmity, jurisdictional error, or perversity in the impugned order passed by the learned Trial Court.
16. Accordingly, the present petition, along with pending application(s), if any, stands dismissed.

**AJAY DIGPAUL, J**

**JULY 30, 2026**

*Sk/as*