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Calcutta High Court (Appellete Side)

Case No: C.O No. 55 Of 2018

Pratyush Kumar Ray		APPELLANT
	Vs	
Vskhaitan Consultants Ltd. & Ors.		RESPONDENT

Date of Decision: Nov. 17, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code Of Civil Procedure, 1908 - Section 151, Order 7 Rule 11, Order 6 Rule 17 Transfer of Property Act, 1882 - Section 54
- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2)

Hon'ble Judges: Bibek Chaudhuri, J

Bench: Single Bench

Advocate: Buddhadev Ghoshal, Partha Banerjee, Mainak Bose, Gaurav Khaitan, Sachin Shukla

Final Decision: Dismissed

Judgement

Bibek Chaudhuri, J

1. The instant civil revision is specially assigned before this Bench for disposal.

2. An order of rejection of amendment of written statement applied by the defendants having been rejected by the trial court vide order dated 6th

November, 2017, therefore the instant revision under article 227 of the Constitution of India has been filed.

3. Suffice it to say that in a suit for eviction the defendants wanted to amend the written statement after commencement of trial with a prayer to

incorporate the following facts:-

4. The original owner could not execute another lease deed in favour of plaintiff for realization of rent when the suit property is in possession of

defendant No.1 and 2. The original owner was therefore unable to handover the actual possession of the premises in suit to the alleged second lessee.

The plaintiff filed the suit on the basis of the alleged second lease executed by the original owner, namely, Emerald Company in as much as the same

was expired by that time by efflux of time. Thus, the defendants wanted to incorporate a dispute of landlord tenant relationship between the plaintiff

and the defendants. It is also stated that creation of any tenancy over an existing tenant is not permissible. The plaintiff compelled the defendants to

become sub-tenant at the instance of Emerald Company by executing the alleged lease deed in the absence of the defendants. Therefore, the suit for

eviction on the ground of subletting is not maintainable at the instance of the plaintiff. The defendants also wanted to plead that no transfer took place

between the plaintiff and the Emerald Company in accordance with the provision of Section 54 of the Transfer of Property Act and as such no new

tenancy can be created over an existing tenancy which was in existence between the defendants and the said Emerald Company.

5. It is not in dispute that the defendants are the legal heirs of the original tenant. The plaintiff filed a suit against the defendants for a decree for

eviction, recovery of khas possession and other consequential reliefs. The defendants appeared in the suit and filed written statement denying all

materials allegation made by the plaintiff in the suit.

Previously, during the tenancy of the suit this Court held in FAT 1195 of 2003, FAT 1132 of 2003 and FAT 798 of 2003 that Khaitan Consultants

Limited, defendant No.1 herein could not file any suit for eviction of the alleged trespasser on the basis of the right conferred by the lease deed

executed in its favour. The present defendant No.1 being the plaintiff in the said suit on the basis of which the above mentioned first appeals were

filed, preferred a special leave petition before the Honâ€™ble Supreme Court against the decision of this Court passed in the above mentioned first

appeals. The special leave petition before the Honâ€™ble Supreme Court was disposed of on 2nd September, 2015 with the following observation.

â€œUpon hearing the learned Counsel for the parties, we are of the view that the High Court ought not to have constrained one of the parties to

amend the plaint. On this short ground, we are setting aside the judgment delivered by the High Court.â€ In the said judgment at paragraph 6 their

Lordships have been pleased to held that â€œThe appeals shall be notified for hearing by the High Court on 02.11.2015 and it would be open to the

parties to raise all contentions permissible in law before the High Court and the order of status quo prevailing on today, shall continue till 30.11.2015.

The said order may be modified by the High Court after hearing the concerned parties, if thought necessary.â€

6. In the mean time the defendant No.1 died leaving behind her only heirs and legal representative, namely Pratyush Kumar Ray the petitioner herein.

The defendant No.2 had withdrawn the application under Order 7 Rule 11 of the Code of Civil Procedure and subsequently filed the application under

Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of written statement.

7. The opposite party No.1/plaintiff No.1 has filed a written statement controverting all material allegations made in the application for amendment of

written statement. It is the specific case of the opposite parties that by filing the application under Order 6 Rule 17 of the Code of Civil Procedure the

defendant/petitioner seeks to add certain facts which would totally changed the nature and character of the defence of the petitioner as well as take

away valuable right of the plaintiff/opposite party. By filing the application for amendment of written statement the defendant has practically changed

the locus standi of the plaintiff to maintain the suit assailing his relationship with the plaintiffs as that of a landlord and tenant. It is also alleged by the

plaintiff that trial of the suit has commenced and at this stage the petitioner cannot amend the plaint as per the specific provision contained in Order 6

Rule 17 of the Code of Civil Procedure. The petitioner cannot take advantage of the order of the Honâ€™ble Supreme Court which was passed in a

separate proceeding and not in connection with this suit. Moreover, the petitioner himself withdrew his application under Order 7 Rule 11 of the CPC

wherein he challenged the relationship of landlord and tenant between the plaintiff and the defendants. Moreover, it is contended by the opposite party

that the petitioner can challenge the maintainability of the suit at the time of final hearing of the matter.

8. Mr. Buddhadev Ghoshal, learned Advocate for the petitioner submits that the petitionerâ€™s prayer for amendment of plaint was rejected by the

learned trail court on the ground that the fact stated in the application for proposed amendment are facts of law since the trial has commenced and the

evidence of DW1 is complete, the plaintiff will not get further opportunity to amend his pleading. Therefore, after the commencement of trial the trail

court refused to grant permission to amend the written statement.

9. Referring to a decision in the case of State Bank of Hyderabad vs. Town Municipal Council reported in (2007) 1 SCC 765, it is submitted by Mr.

Ghoshal that the proviso appended to order 6 Rule 17 of the CPC to the effect 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, does not absolutely preclude a party to file an application for amendment of pleading. Moreover, the ejectment suit was filed

by the plaintiffs in the year 1996 which was initially registered as Ejectment Suit No.308 of 1996 before the learned City Civil Court at Kolkata.

Subsequently, the case was transferred to the Small Causes Court in the Second Bench and the ejectment suit was renumbered as 643 of 2000.

Section 16(2) of the Amendment Act of 2002 states:

â€œ16(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub- section (1) has taken effect, and without prejudice

to the generality of the provisions of section 6 of the General Clauses Act, 1897.

(a) ...

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of

the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the

commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;

10. In view of the said provision, there cannot be any doubt whatsoever that the suit having been filed in the year 1996, proviso under Order 6 Rule 7

of the Code shall not apply.

11. Mr. Ghoshal next refers to a decision of this Court in Ramendranath Banerjee vs. Pradip Kumar Sen reported in (2003) 2 CHN 359. The above

referred decision speaks about the well known and established principle with regard to amendment of pleadings to the effect that the court may at any

stage of the proceeding 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. It is also stated that the suit

filed long before the commencement of the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act,

2002 the proviso to Rule 17 of Order 6 shall not apply. Thus, the learned Magistrate was wrong to reject the application for amendment of written

statement on the ground that the trial of the case has commenced.

12. Order 6 Rule 17 of the CPC deals with amendment of pleadings which provides although the court may at any stage of the proceeding allow either

party to alter or amend his pleadings in such manner and on such terms as may be just, all such amendments shall be made as may be necessary for

the purpose of determining the real questions in controversy between the parties. From the bare perusal of this provision, it appears that Order 6 Rule

17 of the Code consists of two parts. First part is that the court may at any stage of the proceeding allow either party to amend his pleadings and the

second part is that such amendment shall be made for the purpose of determining the real controversy raised between the parties. Therefore, in view

of the provision made under Order 6 Rule 17 of the Code, it cannot be doubted that wide power and unfettered discussion has been conferred on the

ground to allow amendment of pleadings to a party in such manner and on such terms as it appears to the court just and proper. While dealing with

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

suit can be avoided and that the suit can be disposed of expeditiously. It is also recorded that proviso to Rule 17 of Order 6 has perspective effect and

the said proviso is not applicable to the suits instituted prior to 1999 amendment of the Act. In Baldev Singh & Ors. Manohar Singh & Anr. reported in

(2006) 2 WBLR (SC) 904, the Honâ€™ble Supreme Court permitted amendment of written statement even withdrawing certain admissions made by

the defendants in the written statement.

13. Mr. Mainak Bose, leanred Advocate for the opposite parties/plaintiffs, on the other hand submits that in the original written statement the

defendant admitted the plaintiff as his landlord. After such admission the defendants cannot now challenge the landlordship of the plaintiff by filing an

amendment of written statement. It is also submitted by him that amendment of written statement does not permit the defendants to withdraw

admission made by the defendants in their original written statement.

14. It is also submitted by Mr. Bose that in the trial court the petitioner filed an application under Section 17(1) and 17(2) of the West Bengal Premises

Tenancy Act, 1956 for determination of relationship of landlord and tenant between parties and arrear of rent. In the said proceeding the trial court

observed that the defendants accepted the present as their landlord in respect of the suit premises and the plaintiff has been continuing the ownership

of premises even after the expiry of the lease agreement on the basis of a letter issued by Emerald Company Ltd.

15. Referring to a recent decision of the Honâ€™ble Supreme Court in the case of Life Insurance Corporation of India vs. Sanjeeb Builders Private

Limited and Anr. reported in 2022 SCC OnLine SC 1128, it is submitted by Mr. Bose that in paragraph 70(iii) of the Honâ€™ble Supreme Court

observed:

70.(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 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, the amendment is required to be allowed. Equally, where the amendment 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 & Ors., 2022 SCC

OnLine Del 1897)â€

16. It is submitted by Mr. Bose that the proposed amendment of written statement, if allowed will cause injustice to the plaintiff in view of the fact that

the defendants wanted to withdraw clear admission made by them with regard to relationship of landlord and tenant in the written statement.

17. In Ram Niranjan Kajaria vs. Sheo Prakash Kajaria & Ors. reported in (2015) 10 SCC 203, it is clearly held by the Honâ€™ble Supreme Court

that amendment of pleading being wholly an attempt to resile from the admission made by the defendant after a long period of time cannot be

permitted.

18. In M.S Modi Spinning & Weaving Mills Co. Ltd. & Anr. vs. M/s Ladha Ram & Co. reported in (1976) 4 SCC 320, the Honâ€™ble Supreme

Court was pleased to hold that an amendment of plaint cannot be allowed when the effect would be to displace the plaintiffâ€™s suit and deprive him

of a valuable right already accrued to him. In State of Bihar & Ors. vs. Modern Tent House & Anr. reported in (2017) 8 SCC 567, it is held by the

Honâ€™ble Supreme Court that the amendment of written statement sought by appellants/defendants at completion of evidence of

respondents/plaintiffs and that of appellants/defendants remaining, by adding two paragraphs was indisputably to introduce certain facts to elaborate

facts originally pleaded in the written statement. It is amplification of defence already taken. It does not introduce any new defence compared to what

has originally been pleaded in written statement. If allowed it would neither result in changing the defence already taken nor will it result in

withdrawing any kind of admission, if made in written statement. The plaintiffs would not be prejudiced, if such amendment is allowed because

notwithstanding the defence, or/and the proposed amendment, the initial burden to prove case continues to remain on plaintiffs and since trial is not yet

completed, it is in the interest of justice that proposed amendment of defendants should have been allowed by courts below, rather than to allow

defendants to raise such plea at the appellate stage, if occasion so arises.

19. Thus, on careful perusal of the principles governing the field of amendment of pleading and specially amendment of written statement it appears

that in the instant case the amendment of written statement could have been allowed even after commencement of trial. If the proposed amendment

did not introduce a new fact and thereby taking away admission with regard to relationship of landlord and tenant.

20. In the trial court, the defendants in their written statement clearly admitted his relationship that the plaintiffs as that of landlord and tenant. In the

application under Section 17(1), 17(2) of the WBPT Act, 1956 it was decided by the trial court that the plaintiffs are the landlord of the defendants.

The said decision of the trial court was never challenged by the plaintiff. At this stage of trial the plaintiff came up with an amendment proposing that

since the lease deed was not further executed by extending the period in favour of the plaintiff, they are not landlords of the defendants.

21. In view of the previous admission made by the defendants themselves, the proposed amendment cannot be allowed. It is true that the learned trial

judge failed to assigned appropriate reasons for rejection of the application for amendment of plaint but such fault on the part of the learned trial judge

cannot be a ground to allow the application for amendment of written statement filed by the petitioner.

22. For the reasons stated above the instant revision is dismissed on contest. The impugned order dated 6th November, 2017 is affirmed.

23. Lower court record, if any be send to the court below along with a copy of this order.

24. Since the suit is pending from 1996, the trial court shall make all endeavors to conclude the trial of the case by the end of this order without

granting unnecessary adjournments to either of the parties.