

(2003) 03 JH CK 0030

Jharkhand High Court

Case No: Civil Revision No. 381 of 2002

Annapurna Mistanya Bhandar

APPELLANT

Vs

Satya Narain Dudhani and
Others

RESPONDENT

Date of Decision: March 3, 2003

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 15
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2003) 2 JCR 424

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: M.M. Banerjee, for the Appellant; S.L. Agarwal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

This revision application at the instance of defendant/tenant is directed against the order dated 23.7.2002 passed by Addl. District Judge, Dhanbad in Title Appeal No. 39/96 whereby he has allowed the amendment petition filed by the plaintiff landlord under Order VI, Rule 17, CPC for adding and inserting in the plaint the subsequent default as a ground for eviction.

2. The plaintiffs/opposite parties filed Title (eviction) Suit No. 1/85 for a decree of eviction and for recovery of arrears of rent. It was alleged by the plaintiffs that the defendant is a monthly tenant in respect of the suit premises on payment of rent of Rs. 275/-. The defendant defaulted in payment of rent since the month of October, 1983 upto December, and 1984. The suit was contested by the defendant stating inter alia that there is no default in payment of the rent. Learned Sub-Judge, Dhanbad in terms of judgment dated 17.10.1996 dismissed the suit by recording a

finding that there is no default in payment of rent. Plaintiffs then filed Title Appeal being T.A. No. 39/96. During the pendency of the appeal an amendment petition was filed by the plaintiff/appellants alleging that the appeal was filed on 23.12.1996 and after filing of the appeal defendant neglected in payment of rent and as such he is defaulter. The said amendment was allowed by the Court below.

3. I have heard Mr. M.M. Banerjee, learned counsel for the petitioner and Mr. S.L. Agarwal, learned counsel for the opposite parties.

4. From perusal of the record, it appears that during the pendency of the suit the trial Court on the application filed by the plaintiffs u/s 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act passed an order directing the defendants to deposit arrears of rent as also current and future rent. In compliance of the aforesaid order defendants deposited arrears of rent and also current rent till disposal of the suit. At the appellate stage the plaintiff sought amendment of the plaint by inserting that after disposal of the suit defendants failed to deposit the rent and also neglected to pay the rent. The proposed amendment sought for the plaintiffs is quoted herein below :

"SCHEDULE OF AMENDMENT TO BE MADE IN THE PLAINT.

After paragraph 4 of the plaint the following para 4 (a) may be added.

The defendants were directed by order dated passed u/s 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act to deposit current and arrear rent.

The defendants/Respondents deposited rent upto September, 1995 to Nov. 1995 @ Rs. 275/- p.m. i.e. Rs. 825/- by challan No. 508 dated 16.9.1996 and thereafter the defendants/respondents failed and neglected to deposit rent month by month till date either in Court or by Money order as required under the Act. As such, the defendants are defaulters. Respondents deposited rent upto September, 1995 to Nov. 1995 @ Rs. 275/- p.m. i.e. Rs. 825/-by challan No. 508 dated 16.9.1996 and thereafter the defendants/respondents failed and neglected to deposit rent month by month till date either in Court or by Money order as required under the Act. As such, the defendants are defaulters u/s 11(1)(d) of the said Act.

There has been no attempt of the defendants/respondents to deposit rent in Court although the appeal No. 39/96 was filed on 23.12.1996 against the judgment and decree passed in this suit on 2.11.1996."

5. The question therefore, falls for consideration is as to whether Court can take notice of the default occurred during the pendency of the appeal and can allow amendment of the plaint for the purpose of deciding the issue of default in passing a decree for eviction.

6. It is well-settled proposition of law that amendment could be allowed at any stage of the proceeding including the appellate stage but the rule gives discretion to the

Court to allow amendment which is necessary for the purpose of determining the real matter in controversy between the parties. The amendment cannot be claimed as a matter of right. It depends on the fact of each individual case.

7. In the case of " [Pandit Ishwardas Vs. State of Madhya Pradesh and Others](#), the Apex Court while considering the question of amendment of written statement at the appellate stage observed that there is no impediment or bar against an appellate Court permitting amendment of the pleadings. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. It was held that if the necessary material on which the plea arising from amendment may be decided is already there, the amendment may be more readily granted than otherwise.

8. It is true that in order to shorten the litigation, to preserve the rights of both the parties and to Sub-serve the ends of justice the Court should take into consideration the subsequent event and adjudicate the right of the parties and grant relief available to them. It is equally well settled that there is nothing to debar the Court permitting the introduction of cause of action arising subsequent to the filing of the suit by way of amendment so long as the defendant has an opportunity of meeting the new case by amendment of his written statement and by leading evidence in support of his defense. But certainly it does not mean that a party as a matter of right claim introduction of fresh cause of action at the appellate stage and ask the Court to allow amendment of the pleadings and order for the trial de novo. One can understand that during the pendency of a suit for eviction if the defendant/tenant commits fault in payment of rent then one can ask for adding those defaults as an additional ground for eviction and the trial Court may allow such amendment before hearing of the suit is concluded. But at the appellate stage allowing such amendment by introducing a fresh cause of action of default occurred during the pendency of the appeal will amount to sending the matter to the trial Court for fresh hearing on the issue of default. Such an amendment in my opinion cannot be allowed.

9. In the instant case the suit for eviction on the ground of default was dismissed by recording a conclusive finding of default against the plaintiff. During the pendency of the appeal at the instance of the plaintiff if any default is alleged then that cannot be taken into consideration for the purpose of deciding the appeal. Such an amendment which requires fresh evidence and fresh trial need not be normally allowed. Otherwise instead of shorten the litigation it will protract the litigation. This is the reason; the provision of Order VI. Rule 17 has been amended by CPC (Amendment) Act, 2002. The amended provision of Order VI, Rule 17 provides that no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

10. For the reasons aforesaid, in my considered opinion in an appeal arising out of decree for eviction fresh ground of default occurred during the pendency of the appeal should not be allowed. The Court of appeal below therefore, committed error of law in allowing the amendment petition: This revision application is therefore allowed and the impugned order is set aside.