1. John C. Christian 2. Sarah Suchitra Vs R. Adhikesavan and 11 others

Court: Madras High Court

Date of Decision: July 30, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 17, 9
Constitution of India, 1950 â€" Article 227

Citation: (2009) 5 CTC 29

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: R. Gowri, for the Appellant; P.J. George, for the Respondent

Judgement

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K.K. Sasidharan, J.
These three revision petitions are directed against the orders dated 05.09.2008 in I.A.Nos.315, 407 and 408/2008 in

O.S. No. 78/2005 on the file of the Addl. District Judge, Fast Track Court No. 1, Chengalpattu.

Background facts :-

The suit in O.S. No. 78/2005 was filed by the revision petitioner against the respondents praying for a Judgment and Decree of specific

performance on the basis of the agreement dated 25.09.2003 executed by the respondents.

2. In the plaint in O.S. No. 78/2005, it was the contention of the revision petitioners that as per the agreement dated 25.09.2003, the respondents

have agreed to sell the suit property by way of separate sale agreements executed on 25.09.2003. The petitioners were always ready and willing

to perform their part of the contract. However, the respondents failed to receive the balance sale consideration and to get the sale deed executed

in the name of the revision petitioners and as such, they were constrained to file the suit for specific performance.

3. The first respondent has filed written statement wherein it was admitted that agreement was executed on 25.09.2003 between the petitioners

and the respondents 1 to 3. The first respondent has also confirmed the receipt of advance consideration. Similarly, the first respondent confirmed

the factual position that he was negotiating on behalf of the other respondents. It was the contention of the first defendant that time was the essence

of contract and as the revision petitioners failed to perform their part of the contract by paying the balance sale consideration, the agreement had

become inoperative and as such, the ultimate remedy was only to get refund of advance consideration. Accordingly, the first respondent has

prayed for dismissal of the suit.

4. Subsequently, the suit was taken up for trial. On the side of the revision petitioners, first plaintiff was examined as P.W.1 and documents in Ex.

A.1 to A.19 were marked. Since the respondents failed to adduce evidence in spite of sufficient opportunity given to them, the trial Court was

pleased to close their evidence and the matter was posted for arguments.

5. While the matters stood thus, during June 2008, respondents filed three applications. As per the application in I.A. No. 315/2008, they have

prayed for filing additional written statement invoking Order 8 Rule 9 CPC. LA. No. 407/ 2008 was filed for the purpose of reopening the

evidence on the side of the respondents. Similarly, by way of I.A. No. 408/2008, they have prayed to recall P.W.1 for further cross examination.

6. In the affidavit filed in support of the interlocutory applications, it was the contention of the 10th respondent for and on behalf of all the

respondents that the suit was posted on 27.06.2008 for arguments after recording evidence on the side of the plaintiff. In the meantime, they have

decided to change their counsel on account of their lack of confidence in him and as the counsel was not prepared to give change of vakalat, an

application in I.A. No. 738/2007 was filed for revocation of vakalat and as per Order dated 25.04.2008, the vakalat given in favour of the earlier

counsel was revoked. Subsequently, they have engaged another counsel and on a perusal of the records, it was found that the written statement

filed on their behalf did not represent full facts. The counsel newly engaged by them also informed them that there was no proper cross examination

of the witnesses examined on the side of the plaintiffs. Similarly, no evidence was let in on the side of the respondents. Therefore, the respondents

were advised to file additional written statement incorporating their defence and to recall P.W.1 for further cross examination besides reopening the

evidence on the side of the respondents as defendants.

7. The revision petitioners contested all these three interlocutory applications by filing counter. According to the petitioners, the suit was filed on

16.04.2005 and the written statement was filed on 07.08.2006. It was long after the conclusion of the trial and when the matter was posted for

arguments, they have come up with an additional written statement which contradicts their earlier case and as such, they have not made out a case

for receiving additional written statement as well as to reopen the evidence for the purpose of recalling P.W-1 and to examine the witness on the

side of the respondents.

8. The learned Trial Judge was of the view that by way of filing additional written statement, the respondents were not introducing a new case and

as such, they should be permitted to file additional written statement. The learned Trial Judge also observed that there was no evidence adduced

on the side of the respondents and as such, they should be given an opportunity to contest the case on merits, and for deciding the lis, it was

absolutely necessary to permit them to file additional written statement. Accordingly, the applications were allowed. Aggrieved by the common

Order dated 05.09.2008, revision petitioners have filed these three revision petitions.

Contentions :-

9. The learned Counsel for the revision petitioners vehemently contended that the plea raised in the additional written statement is a new plea and

on a perusal of the version as contained in the original Written Statement it is clear that the defence is mutually destructive and as such, the learned

Trial Judge erred in allowing the amendment. According to the learned Counsel, the new plea as found in the additional written statement is clearly

an afterthought to fill up the lacuna in the facts as originally pleaded and that too after a considerable delay and as such, the trial Court should not

have granted liberty to file additional written statement. The learned Counsel also contended that the power under Order 18 Rule 17 CPC could

be used only in exceptional cases with great care and caution and the learned Trial Judge appears to have allowed the application to recall PW-1

as a matter of course without considering the issue in the proper perspective.

10. The learned Counsel appearing for the petitioner also contended that there was an Order of Interim Injunction restraining the respondents from

assigning the property during the pendency of the suit and disregarding the said Order of injunction, the respondents have sold the property in

favour of third parties and as such, no credence could be given to the sale Agreement.

11. The learned Counsel for the respondents contended that in the Written Statement filed originally, material evidence were omitted to be

pleaded. Accordingly to the learned Counsel, the required information were given to the counsel originally appearing for the respondents.

However, those details, were not incorporated in the Written Statement. The respondents being illiterates, residing in rural area, were not

conversant with the pleadings and as such, no mala fides could be attributed against them for filing additional written statement with correct

particulars.

12. In answer to the contentions of the learned Counsel for the revision petitioners about the assignment of land during the pendency of the civil suit

and during the subsistence of the Order of injunction, the learned Counsel for the respondents contended that the injunction was only against the

respondents. However, they have executed a power of attorney in favour of the purchaser with whom they have executed an Agreement as early

as in the year 2003 itself. The impugned agreement was executed with the revision petitioners only after the execution of the agreement in favour of

one P. Sarasagopal. It was only when they were convinced that the Agreement holder P. Sarasagopal was not serious about the transaction, they

have entered into the Agreement with the revision petitioners.

13. However, the revision petitioners also failed to pay the balance consideration. At that point of time, the earlier agreement holder P.

Sarasagopal approached them and agreed to take the property in pursuance of the sale Agreement dated 16.08.2003. In the said circumstances,

the respondents have executed the Power of Attorney in his favour on 25.10.2004 after receipt of balance consideration. The learned Counsel

contended that insofar as the respondents are concerned, they have parted with the property as early as on 25.10.2004 with the execution of

Power of Attorney. The subsequent transaction was only by the Agreement holder P. Sarasagopal on the basis of the Power of Attorney and as

such, it cannot be said that the respondents have violated the Order of injunction by assigning the property during the currency of the Order of

injunction.

Consideration :-

14. The suit in O.S. No. 78/2008 was filed as early as on 16.04.2005. The first Respondent has filed his Written Statement on 07.08.2006. In the

Written Statement originally filed, execution of the sale agreement was clearly admitted. However, it was the contention of the first respondent that

the revision petitioners failed to honour the commitments made in the sale agreement and as such, they were not entitled for an equitable remedy of

specific performance. In short, it was the contention of the respondents that time was the essence of the contract and since the revision petitioners

failed to pay the balance consideration, sale deed was not executed in their favour and as such, the revision petitioners are not entitled for a Decree

of specific performance.

15. Subsequently, issues were framed on 12.04.2007 and the suit was taken up on 05.07.2007. When the matter came up on 05.07.2007,

petitioners have filed their proof affidavit and they have also marked documents in Exs.A-1 to A-19 to substantiate their contention. PW-1 was

also cross examined by the counsel for the respondent on 05.09.2007 and ultimately, the plaintiffs evidence was closed on 25.09.2007. The

matter was subsequently posted for the evidence of the respondents as Defendants on 04.10.2007. It was adjourned at the request of the

respondents for various dates on 10.10.2007, 25.10.2007,05.11.2007, 14.11.2007 and 22.11.2007. When the matter came up on 22.11.2007,

the learned Trial Judge found that sufficient opportunity was given to the respondents and in spite of the same, they were not prepared to adduce

evidence. Accordingly, evidence was closed and the matter was adjourned for the purpose of arguments. It was long after in June 2008,

respondents have filed the interlocutory applications for the purpose of receiving additional written statement and to recall PW-1 for further cross

examination as well as to reopen the side of the respondents for recording evidence.

The question :-

16. The substantial question to be decided in the Civil Revision Petition is as to whether the intention of the respondents by filing additional written

statement was only to resile from the admission already made in the written statement filed originally during the year 2006.

17. The written statement was filed by the first respondent and it was adopted by the other respondents. In the written statement, the first

respondent has admitted that a sale agreement was executed between the revision petitioners and the respondents on 25.09.2003. However, they

have denied the averment that the revision petitioners were ready and willing to perform their part of the contract at all point of time. According to

the respondents, time was the essence of the contract. It was further contended that the parties have agreed that the sale should be completed

within three months from the date of execution of the sale agreement after payment of the sale consideration. There was also an indication that

there were several mediations in the village with respect to the subject sale all of which ended in vain as the revision petitioners have not chosen to

come forward to complete their part of the contract. The respondents also reserved their right to file additional written statement.

18. In the additional written statement, it was the contention of the respondents that they have entered into a prior agreement of sale with one P.

Sarasagopal on 16.08.2003 to sell the suit property to him or to his nominees. Since the said P. Sarasagopal failed to honour his commitments,

they have entered into the suit agreement with the petitioners with a clear understanding that the petitioners have to complete the transaction within

three months which was subsequently extended by six months. However, even after expiry of the time extended, the revision petitioners were not

prepared to stick to the time schedule. The respondents were also not in a position to return the advance sale consideration. In the meantime,

original agreement holder P. Sarasagopal agreed to pay the balance sale consideration as per the original agreement dated 16.08.2003 without

insisting for execution of a fresh sale agreement. The said suggestion was acceptable to the respondents and on receipt of the entire amount, they

have executed power of attorney dated 25.10.2004 in favour of P. Sarasagopal and those two power of attorney were was registered as

document Nos. 767 and 768/2004 on the file of the Sub Registrar, Thiruporur. Subsequently, the respondents called upon the revision petitioners

to take back the advance given by them. It was at that point of time, the revision petitioners changed their mind in view of the price escalation and

filed the suit.

19. The respondents also contended that they are uneducated farmers and they blindly filed the written statement prepared by their earlier counsel

and it was only when they found that their earlier counsel was acting in an indifferent manner, they have changed the counsel and appointed another

counsel.

20. The written statement originally filed by the revision petitioners proceeds on the basis that there was a sale agreement executed between the

petitioners and the respondents on 25.09.2003. In the additional written statement filed by them, there was no denial of the execution of the

agreement dated 25.09.2003. The respondents were only explaining the background facts which led to the execution of Power of Attorney in

favour of the earlier purchaser on the basis of which the property was sold. There was no attempt on the part of the respondents to resile from the

admission already made in the original written statement. The respondents were only furnishing certain further particulars with respect to the

transaction involving P. Sarasagopal. It is also a fact that power of attorney dated 25.10.2004 was a registered Power of Attorney. Therefore, it

cannot be said that the respondents were fabricating the documents for the purpose of defeating the claim made by the revision petitioners. It is

true that there was an admission in the earlier statement with respect to the conclusion of the sale agreement with the revision petitioners. However,

even in the additional written statement, the facts are not different. The respondents no where stated in the additional written statement that there

was no sale agreement with the revision petitioners. All that they want to submit was regarding an earlier transaction on the basis of which two

power of attorneys were executed on 25.10.2004.

21. While considering the application for permitting the respondents to file additional written statement, the background facts of this case is also to

be taken into consideration. Originally, the respondents were represented by a counsel who filed written statement. According to the respondents,

the said counsel has only reproduced the contents of the reply notice in the written statement and the details with regard to the transaction to which

the respondents were parties were omitted to be mentioned in the written statement originally filed.

22. It is also found that the counsel for the respondents failed to cross examine the witness on the side of the revision petitioners. The fact that the

earlier counsel was not prepared to give change of vakalat is also evident by the fact that it was only as per the order in Application in A. No.

738/2007 dated 25.04.2008, the vakalat in favour of the earlier counsel was revoked. The respondents are admittedly villagers and the fact has

not been denied by the revision petitioners. It is true that the respondents have to take responsibility for the statements made earlier in the written

statement. However, even in the additional written statement they were not disowning the statement made in the written statement originally filed.

The attempt was only to supplement certain other details with respect to the transaction relating to the suit property. The question would be

different in case, the respondents were taking a self-destructive defence by way of supplementary pleadings. A conjoint reading of the written

statement originally filed as well as the additional written statement would clearly show that the attempt was only to furnish better particulars and

the other related transactions and it was not an attempt to resile from the admission already made in the written statement originally filed.

The law :-

23. In M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., the issue before the Supreme Court was in respect of an amendment of written statement

in the light of the objection taken by the plaintiff that the proposed amendment was inconsistent with the defence already taken in the original

written statement. In the said factual context, the Supreme Court observed thus :-

5. ...By the proposed amendment the defendant wanted to say that Ala Mohan Dass was a permissive occupier instead of owner. The further

amendment sought was based on the entries made in the revenue records. It is not shown how the proposed amendment prejudiced the case of the

plaintiff. It is also not the case of the plaintiff that any accrued right to it was tried to be taken away by the proposed amendment. The proposed

amendment is to elaborate the defence and to take additional plea in support of its case. Assuming that there was some admission indirectly, it is

open to the defendant to explain the same. Looking to the proposed amendment, it is clear that it is required for proper adjudication of the

controversy between the parties and to avoid multiplicity of judicial proceedings. The High Court also found fault with the defendant on the ground

that there was delay of three years in seeking amendment to introduce new defence. From the records, it cannot be said that any new defence was

sought to be introduced. Even otherwise, it was open for the defendant to take alternative or additional defence. Merely because there was delay

in making the amendment application, when no serious prejudice is shown to have been caused to the plaintiff so as to take away any accrued

right, the application could not be rejected. At any rate, it cannot be said that allowing the amendment caused irretrievable prejudice to the plaintiff

Further, the plaintiff can file his reply to the amended written statement and fight the case on merits.

24. The Supreme Court in Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., held that inconsistent pleas could be raised by

defence in written statement although the same may not be permissible in case of a plaint and explained the position thus :-

15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as

the trial court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground

of rejection made by the High Court as well as the trial court. After going through the pleadings and also the statements made in the application for

amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their

application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written

statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the

written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written

statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the

rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim

has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering

a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of

written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice

is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are therefore of the view that inconsistent pleas can be raised by the defendants in the written statement although

the same may not be permissible in the case of plaint. In Modi Spg. and Wvg. Mills Co. Ltd. v. Ladha Ram & Co. this principle has been

enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement.

Accordingly, the High Court and the trial court had gone wrong in holding that the defendant-appellants are not allowed to take inconsistent pleas

in their defence.

25. In Punjab National Bank Vs. Indian Bank and Another, the Supreme Court explained the permissibility of clarificatory amendment thus :-

15. ... In Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others, , it has been held mat amendment can be refused when

the effect of it would be to take away from a party a legal right which had accrued to him by lapse of time. It may be so when fresh allegations are

added or fresh relief"s are sought by way of amendment. But where the amendment merely clarifies an existing pleading and does not in substance

add to or alter it, there is no good reason not to allow the same nor would even the bar of limitation come in the way. No fresh allegations of facts

have been introduced and/or added nor is any fresh cause of action or new relief sought to be added. A matter already contained in the original

pleading can always be clarified and such an amendment should ordinarily be allowed and in such a case me question of bar of limitation would not

be attracted.

17. The position that emerges from the decisions referred to earlier is that an amendment would generally not be disallowed except where a time-

barred claim is sought to be introduced, there too it would be one of the factors for consideration or where it changes the nature of the suit itself or

it is mala fide or the other party cannot be placed in the same position had the plaint been originally filed correctly, that is to say, the other side has

lost right of a valid defence by subsequent amendment.

26. The Supreme Court in Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, , indicated the approach to be taken by the Courts in

the matter of amendment and made the legal position thus :-

15. The object of the rule is that the courts should try the merits of the case mat come before them and should, consequently, allow all amendments

mat may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the

other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading.

The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for me purpose of determining the real

question in controversy between the parties.

18. ...It is settled by a catena of decisions of mis Court that the rule of amendment is essentially a rule of justice, equity and good conscience and

the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before me court.

27. In Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, the Supreme Court held that the correctness or falsity of the case in

amended written statement is not a matter to be looked into at the time of considering the application for amendment. The relevant observation

would read thus :-

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or

falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment

sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

28. In Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, the principles relating to the amendment of pleading was

explained thus :

17. From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the

proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the

real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for

amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not

have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the

present case, as the trial of the suit has not yet commenced.

18. It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the

prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for

amendment was not a bona fide one. In this connection, the observation of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung may be

taken note of. The Privy Council observed:

All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be

made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but

nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of

amendment, the subject-matter of the suit.

19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on

different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the

nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore,

addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be

objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an

amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see B.K. Narayana Pillai v.

Parameswaran Pillai and Baldev Singh v. Manohar Singh). Even the decision relied on by the plaintiff in Modi Spg.1 clearly recognises that

inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v.

Sukhnandan Ramdas Chaudhary. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others.

Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section

15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such

an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi case as follows:

3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his

written statement under Order 6 Rule 17 CPC by taking a contrary stand than what was stated originally in the written statement. This is opposed

to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the cause of action is not in any manner

affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action.

29. In Gautam Sarup Vs. Leela Jetly and Others, the Supreme Court considered the earlier decision with respect to amendment of pleadings in

Order 6 Rule 17 CPC particularly with reference to withdrawal of admission made in the written statement originally filed by way of additional

written statement or by an amendment of pleadings and made the legal position thus :-

28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it

may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature

and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually

destructive of each other.

29. An explanation can be offered provided there is any scope therefore. A clarification may be made where the same is needed.

30. In Vimal Chand Ghevarchand Jain and ors. v. Ramakant Eknath Jajoo, 2009 (5) SC 59, the Supreme Court again considered the question of

alternative and inconsistent plea taken by way of amendment of pleadings and observed thus :-

16. ...Pleadings of the parties, it is trite, are required to be read as a whole. Defendants, although are entitled to raise alternative and inconsistent

plea but should not be permitted to raise pleas which are mutually destructive of each other. It is also a cardinal principle of appreciation of

evidence that the Court in considering as to whether the deposition of a witness and/or a party is truthful or not may consider his conduct. Equally

well settled is the principle of law that an admission made by a party in his pleadings is admissible against him proprio vigore. [see

Ranganayakamma and Another Vs. K.S. Prakash (D) by L.Rs. and Others,

31. In a recent decision reported in Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Others, the Supreme Court reiterated the

legal position with respect to amendment of pleadings thus:-

A plain reading of the impugned order of the High Court would show that two grounds were given by the High Court to reject the application for

acceptance of the additional counter statement filed by the appellant. The first ground was that the appellant had filed a belated application for

acceptance of an additional counter statement when examination of P.W. 1 was already over. So far as this ground is concerned, we do not find

that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse

to allow amendment of pleadings or filing of additional counter statement. At the same time, delay is no ground for dismissal of an application under

Order 8 Rule 9 of the CPC where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement

which could easily be compensated by cost. That apart, the delay in filing the additional counter statement has been properly explained by the

appellant. The averments made in the additional counter statement could not be raised by the appellant earlier since the appellant was under the

impression that the lease agreement was destroyed in a fire accident and that he incidentally discovered the lease files in an old trunk only in

October 1996 while he was cleaning the house for Pooja celebration. This explanation, in our view, cannot be rejected. Therefore, the first ground

on which the additional counter statement sought to be rejected by the High Court in the exercise of its revisional power, in our view, cannot be

sustained. The second ground on which the High Court had interfered with the concurrent orders of the tribunal below in accepting the additional

counter statement was that a new plea was raised in the same in respect of which there was no slightest basis in the original counter statement filed

by the appellant. According to the High Court, the plea that vacant land was let out to the appellant is a fundamental alteration of the pleadings

already put forth by the appellant and the appellant cannot be permitted to introduce totally a new case. The additional counter statement alleging

that there was written agreement and that the appellant is only a lessee of vacant site introduces totally a new case which would totally displace the

landlord. The High Court held that such a new plea cannot be permitted to be taken by permitting the appellant to file additional counter statement.

In our view, this is also not a ground for which the High Court could interfere with the concurrent orders of the Rent Control Tribunal and reject

the application for permission to file additional counter statement. In our view, even by filing an amendment or additional counter statement, it is

open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter

statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. [See :

Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, Therefore, we are unable to agree with the High Court on this ground

as well. It is also well settled that the courts should be more generous in allowing the amendment of the counter statement of the defendant then in

the case of plaint. The High Court in its impugned order has also observed that in order to file an additional counter statement, it would be open to

the defendant to take inconsistent plea. The prayer for acceptance of the additional counter statement was rejected by the High Court on the

ground that while allowing such additional counter statement to be accepted, it has to be seen whether it was expedient with reference to the

circumstances of the case to permit such a plea being put forward at that stage. As noted herein earlier, the only ground on which the High Court

had rejected the acceptance of the additional counter statement was (i) by filing of such additional counter statement, the appellant was introducing

a new case and (2) the entire trial, was to be reopened causing great prejudice to the respondents whose examination was completed. It was also

observed by the High Court that the appellant cannot be able to take such inconsistent plea by filing additional counter statement after cross-

examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as

from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated

by cost. As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter statement the reasons for

taking such new plea, viz., he could trace out the lease deed pertaining to the lease only when he was cleaning the boxes. The respondents have

also not disputed as to the existence of the lease deed only they are disputing the filing of the additional counter statement at such a belated stage.

This being the position, we are of the view that even if the examination of PW-1 or his cross- examination was over, then also, it was open to the

court to accept the additional counter statement filed by the appellant by awarding some cost against the appellant. It is also well settled that while

allowing additional counter statement or refusing to accept the same, the court should only see that if such additional counter statement is not

accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter statement in the

present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy

between the parties.

Applicability of decisions on facts :-

32. The learned counsel for the revision petitioner placed reliance on the following judgments :-

1. R.S. Nagarajan v. R.S. Gopalan & ors. [2007 (1) CTC 586 = 2007- 2-L.W.987]

2. Chandra, Chinnadurai and Poongavanam Vs. Ranganathan,

3. Kolandasamy Vs. Rathinam @ Rathinayal,

4. P.N. Deenadayalan Vs. Ramagiri Narasimhulu Chetty, Aruna and Vishak Kumar,

5. Tajdeen v. Abdul Muthalif [2009 (3) MLJ 959]

6. Kaliammal and Others Vs. P. Marimuthu and C.K. Selvaraj,

7. V. Shanmugam Vs. S. Umamaheswaran,

33. In R.S. Nagarajan v. R.S. Gopalan & ors. [2007 (1) CTC 586 = 2007-2-L.W.987], the second defendant has filed written statement refuting

the contentions raised in the plaint. Subsequently, he filed a petition to receive additional written statement wherein it was his contention that his

brother, first defendant to the suit, prevailed over him to sign the statement prepared by him and subsequently, he realized the position and as such,

it has become necessary for him to tell the truth before the Court by filing additional written statement, by giving a total go-bye to the pleadings

raised in the original written statement and by introducing a new case in the additional written statement. In the said factual context, the learned

Judge observed that the defendant cannot raise mutually destructive pleas by way of additional written statement.

34. In Kaliammal and Others Vs. P. Marimuthu and C.K. Selvaraj, by way of additional written statement, a totally destructive case was intended

to be introduced inasmuch as originally there was an admission with regard to the sale agreement. However, by way of amendment, it was

contended that it was not a sale agreement and it was only a document executed as a security for the amount borrowed.

35. In Tajdeen v. Abdul Muthalif [2009 (3) MLJ 959], defendant denied the execution of settlement deed in the original written statement.

However, in the additional written statement, it was his contention that the document was not acted upon.

36. In Kolandasamy Vs. Rathinam @ Rathinayal, the amendment was disallowed solely on the ground that the application was filed only during the

fag end of the trial and that too without adducing any reason.

37. In P.N. Deenadayalan Vs. Ramagiri Narasimhulu Chetty, Aruna and Vishak Kumar, again the amendment was with respect to plaint and it

was fourth amendment and that too after the commencement of trial.

38. In R. Vino and anr. vs. Maria Grace Benefit Fund Ltd. [2008 (3) LW 529], the issue was as to whether the defendants could be permitted to

file an additional written statement containing a totally different case in the written statement and that too during the final stage of the suit.

39. The decisions relied on by the learned Counsel appearing for the petitioner are all relating to cases wherein additional written statement was

sought to be filed with totally inconsistent pleas and with an intention to take away the valuable defence accrued to the other side. However, in the

present case, the respondents have not denied the execution of sale Agreement. Even in the additional written statement it was not their case that

no such Agreement was executed with the revision petitioners. All that they want to state was with respect to the parallel transactions which

culminated in registration of Power of Attorney in favour of third party. Therefore, none of the decisions relied on by the learned Counsel for the

revision petitioners applies to the facts of the present case.

40. The respondents have also filed two other applications to recall P.W.1 for further cross examination as well as to reopen their evidence.

Admittedly, there was no evidence adduced on the side of the respondents in the suit. Similarly, cross examination of PW-1 was made only in the

light of the Written Statement filed originally by the respondents.

41. The learned Trial Judge considered the entire issue in extenso and was of the view that by way of additional written statement, the respondents

were only detailing certain points which was contained in the Written Statement originally filed. The learned Trial Judge also observed that there

was no new pleading or new facts constituted in the additional written statement and as such, the respondents should be given an opportunity to

submit their version and to lead evidence on their side as well as to cross-examine PW-1.

42. The respondents have admitted the execution of the sale Agreement in favour of the revision petitioners. They have also contended that there

was an earlier sale Agreement executed in favour of Sarasagopal and they have also executed Power of Attorney by way of two documents in

favour of the purchaser. The entire matter is now at large before the learned Trial Judge and learned Trial Judge has to appreciate the matter by

considering the evidence to be adduced by the parties in the light of the pleadings.

43. The learned Trial Judge has exercised the discretion in accordance with the legal principles.

Supervisory jurisdiction :-

44. In M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., , the Supreme Court considered the extent of jurisdiction under article 227 of the

Constitution of India thus :-

6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and

explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts

and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is

not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the

subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious

dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice

remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or

substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High

Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse,

that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

Disposal :-

45. Therefore, I am of the view that the learned Trial Judge has considered the entire issue in the light of the background facts of the litigation and

arrived at the correct conclusion that the respondents have made out a case for filing additional written statement and to reopen their evidence as

well as to recall P.W.1 for further cross examination. On a perusal of the written statement originally filed as well as the additional written

statement, in the light of the affidavit filed in support of the application to receive the additional written statement, I am of the view that serious

prejudice would be caused in case the respondents are denied an opportunity to explain their case and to lead evidence on their side. In any case,

there is no error or illegality in the Order of the learned Trial Judge warranting interference in a supervisory jurisdiction under Article 227 of the

Constitution of India. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, M.P. Nos. 1, 1, 1/2008 are also dismissed.