

(2013) 04 DEL CK 0341

Delhi High Court

Case No: CM (M) 54 of 2013 and C.M. No. 778 of 2013

Munshi Lal

APPELLANT

Vs

Pradeep Anand

RESPONDENT

Date of Decision: April 25, 2013**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Delhi Rent Control Act, 1958 - Section 45

Hon'ble Judges: Indermeet Kaur, J**Bench:** Single Bench**Advocate:** Rajiv Bajaj, for the Appellant; Vipin Nandwani, for the Respondent**Final Decision:** Dismissed

Judgement

Indermeet Kaur, J.

The respondent (Pradeep Anand) had filed the present suit for possession and mesne profits against the petitioner (Munshi Lal). After service of summons, written statement was filed. In para 1 in the reply on merits, it was stated that the rent of Rs. 4000/- per month was inclusive of electricity charges. This written statement has been filed on 29.12.2011.

2. An application under Order 6 Rule 17 of the CPC (hereinafter referred to as the Code) was filed by the defendant thereafter i.e. on 22.12.2012. Certain amendments were prayed for in the written statement. The averments made in this application have been perused. By way of this application the petitioner sought to incorporate para 7 and para 8 which were largely to the effect that in an earlier proceedings u/s 45 of the Delhi Rent Control Act (hereinafter referred to as the DRCA) a compromise had been entered into between the parties; a memorandum of understanding dated 17.9.2010 had been executed in terms of which the petitioner had agreed to pay monthly rent of Rs. 4000/- on the first day of every calendar month. This is contained in para 4 of the said memorandum of understanding. Further averment in this

application being to the effect that since this MOU was silent on arrears of rent, the claim by the respondent in the present suit seeking arrears of rent is not maintainable. Another submission made was that the rent of the premises was initially Rs. 2500/- per month and not Rs. 4000/- per month; it was enhanced only w.e.f. the MOU.

3. Reply had been filed to the aforementioned application denying the submissions. The contention of the respondent was that an admission had been made by the petitioner in his written statement which was to the effect that the rate of rent was Rs. 4000/- per month; this also found mention in the reply filed by the petitioner to the legal notice of the respondent wherein also he had admitted that the rate of rent was Rs. 4000/- per month. Submission being that the incorporation of the plea that arrears of rent are not liable to be paid by the petitioner as it is not a part of the MOU would in fact amounts to a withdrawal of admission about earlier stand of the petitioner would be contrary to the oral stand of the petitioner which is to the effect that rate of rent is, in fact, Rs. 2500/- per month and not Rs. 4000/- per month.

4. Arguments have been heard. The purport and purpose of allowing an application for amendment is to resolve the controversy in the case; the amendment should also not dislodge or prejudice the opposing party. A liberal view may be adopted in allowing an amendment but this has to be in consonance with and keeping in mind the aforementioned parameters which also include that the applicant party is not seeking an amendment as a delaying tactic. An amendment should not be allowed if it is prejudicial to the interest of the opposing party.

5. Record shows that the case of the petitioner all along was that he had given this property on rent to the petitioner in the sum of Rs. 4000/- per month; this specifically finds mention in the plaint. In the written statement filed by the respondent (adverted to supra) it has been admitted by the respondent that the monthly rent is Rs. 4000/-. It is only his oral submission that the rate of rent is Rs. 2500/- and not Rs. 4000/-. This is not borne out from any written document or any written plea taken either before the trial court or even before the court where proceedings u/s 45 of the DRCA were initiated. On the MOU entered between the parties on 17.9.2010 before the ARC the petitioner had agreed to pay rent at Rs. 4000/- per month. Merely because the clause about recovery of arrears had not been specified would not entitle the petitioner to re-tract his original stand which was that the rate of rent was Rs. 4000/- per month. This was also his reply to the legal notice served upon him by the respondent. The law contrary plea now sought to be set up that the rate of rent was Rs. 2500/- per month and not Rs. 4000/- was diametrically opposed to his earlier plea. This is not the purport of an amendment.

6. The second averment in the amendment application that the proceedings u/s 45 of the DRCA have to be brought on record by way of the amendment was also rightly disallowed as this submission already forms a part of the original written statement.

7. The law of amendment is well settled. The primary duty of the court is to judge whether such an amendment is necessary to decide the real controversy raised between the parties. The plea should however be bonafide and not cause prejudice to the other side. It was these parameters which had weighed with the Court while dismissing the aforesaid application. Petition is without any merit. Dismissed.