Civil Revision

Present:

The Hon'ble Justice Jyotirmay Bhattacharya

Judgment on 09.09.2010

C.O. No. 1960 of 2010

*M/S RAJASTHAN FERTILISERS & CHEMICALS CORPPORATION LTD..*

*VERSUS*

*M/S SHREE HANUMAN JUTE PRESS PVT. LTD.*

POINTS:

**AMENDMENT OF WRITTEN STATEMENT:** Defendant's application under section 17(2) of the West Bengal Premises Tenancy Act, 1956 disposed of directing to pay the arrears- Defendant claimed that they renovated the old dilapidated godown let out to them - Defendant by way of amendment wanted to incorporate that they were inducted in the land and he constructed the godownd and they was a thika tenant- The amendment is mutually destructive in nature whether should be allowed- **Code of Civil Procedure, 1908 O 6 R 17**

FACTS:

Defendant originally pleaded that they were inducted in a burnt and dilapidated godown and they have reconstructed the godown. They have filed an application under section 17 (2) of the West Bengal Premises Tenancy Act, 1956. Learned Trial Court disposed of the said application directing the defendant to pay the arrears within a certain period. Thereafter at the time of the trial of the suit the defendant filed an application for amendment of written statement wherein they wanted to incorporate that they were inducted in the land and they have constructed the godown. They are thika tenant and the land has vested to the State. Trial Court rejected the application for amendment.

HELD:

The clear and unambiguous admission regarding its status as that of a premises tenant in the suit premises which was made by the defendant in its application under Section 17(2) of the said Act, cannot be lost sight of by this Court. The defendant all throughout maintained its stand, that the defendant is a premises tenant in respect of a burnt and dilapidated godown which was

subsequently reconstructed by the defendant. The defendant never contended earlier that the defendant is a thika tenant of the bare land on which it constructed a godown. The defendant has not prayed for deletion of its earlier stand regarding its tenancy right in the suit premises under the Premises Tenancy Act, 1956. The defendant cannot maintain two different stands which are mutually destructive to each other. Para 18

Thus on the face of it, the proposed amendment, is mutually destructive to the original pleading of the defendant. The proposed amendment is not a bona fide one. If this amendment is allowed, then the plaintiff will be deprived of extracting the benefit of the admission regarding the nature of the tenancy made in the original written statement. That apart the proposed amendment has a far reaching effect. If the amendment as sought for, is allowed at the stage of trial of suit, the plaintiff will be non suited, as he cannot maintain the suit on the basis of the cause of action pleaded in the plaint. As such this court holds that it is a mala fide application. Para 19

Under such circumstances the defendant cannot be permitted to amend his written statement for introducing a completely new defence which, if is allowed, will require a de novo trial of a completely new issue and thereby the scope and/or ambit and/or dimension of the suit will be unnecessarily expanded. As such, the said amendment cannot be allowed. Para 20

Cases cited:

Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.,AIR 2007 Supreme Court 1663(1); (2000) 1 Supreme Court Cases 712; Shri Iswar Jagannath Deb Jew vs. Fatik Chandra Seal & Ors,AIR 1972 Calcutta 372; Bibhas Chandra Bose vs. Sm. Dolly Bose nee Dutta reported in AIR 1989 Calcutta 190; Dondapati Narayana Reddy vs. Duggireddy Venksatanarayana Reddy & Ors.,AIR 2001 Supreme Court 3685.;Andhra Bank vs. ABN Amro Bank & Ors.AIR 2007 Supreme Court 2511 ; Heeralal vs. Kalyan Mal & Ors. reported in (1998) 1 Supreme Court Cases 278; Gautam Sarup vs. Leela Jetly & Ors. reported in (2008) 7 Supreme Court Cases 85.

For the Petitioner : Mr. Krishna Raj Thakkar
Mrs. Arpita Mallick

For the Opposite Party : Mr. Sudhis Dasgupta
Mr. Sibasish Ghosh

The Court:

The plaintiff/opposite party filed a suit for eviction against the defendant/petitioner herein on the ground of unauthorized subletting of the suit premises to various sub-tenants. Since the defendant did not vacate the suit premises in spite of service of ejectment notice upon the defendant, the plaintiff filed the instant suit for eviction against the said defendant.

2. The defendant/petitioner appeared in the said suit and filed written statement denying the allegations made out by the plaintiff in the plaint. The defendant contended therein that the defendant is not a monthly premises tenant in respect of the suit premises comprising of godown measuring about 10,000 square feet. The defendant claimed that the defendant is a tenant in respect of burnt and dilapidated godown comprising of an area measuring about 10,300 square feet. The relationship of landlord and tenant between the parties was denied by the defendant in the written statement. It was stated therein that the defendant was inducted as a tenant in the suit premises by M/s. Property Developers Company and as such the plaintiff is not the landlord of the defendant. It was further stated therein that after obtaining the said tenancy, the defendant reconstructed the said godown and has been carrying on his business therein paying rent regularly to M/s property developers and company. The allegation of unauthorized subletting was also denied by the defendant in the said suit. The defendant is thus contesting the said suit with the above defence and has prayed for dismissal of the said suit.

3. Subsequently the defendant filed an application under Section 17(2) of the West Bengal Premises Tenancy Act of 1956 for determination of the dispute regarding existence of relationship of landlord and tenant between the parties and for determination of arrear rent, if any, payable by the defendant to his landlord. In paragraph 3 of the said application the defendant stated that “the defendant is a monthly premises tenant at a rental of Rs.975/- per month under the property developers & company payable according to English Calendar month.”

4. The defendant’s said application was decided by the learned Trial Judge by holding that the relationship of landlord and tenant exists between the parties. The defendant was found to be a

defaulter in payment of rent for certain period and the defendant was directed to pay a sum of Rs.2113.50 paise towards the arrear rent including the statutory interest thereon within certain period. The said order was affirmed in revision by the Hon'ble Justice Narayan Chandra Sil (as His Lordship then was) on 8th August, 2002 in Civil Revisional application being C.O. No. 859 of 2002.

5. Subsequently the suit was matured for hearing and after commencement of the trial of the said suit, the defendant filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of its written statement for introducing therein that the defendant, in fact, was inducted as tenant in the suit premises which was a bare land only at the time of its induction together with the right to raise construction thereon. On the strength of such authorization, the defendant constructed the godown and has been carrying on the business therein. The defendant wanted to introduce that the defendant, in fact, was inducted as a thika tenant in the suit premises and the right of the Jamindar was vested with the State from the date of vesting. As such the suit for eviction which was filed under the provision of the West Bengal Premises Tenancy Act, 1956, is not maintainable. The defendant also wanted to add some more paragraphs for reiterating its original stand regarding the dispute relating to existence of relationship of landlord and tenant between the parties. The defendant also wanted to introduce that the findings which were arrived at by the learned Trial Judge as well as by the Hon'ble High Court on the defendant's application under Section 17(2) of the said Act were tentative findings and as such those findings are not conclusive so far as the issue relating to existence of relationship of landlord and tenant between the parties, is concerned in the suit.

6. The learned Trial Judge rejected the defendant's said application for amendment primarily on the ground of delay, by applying the proviso added to Order 6 Rule 17 of the Code of Civil Procedure. The learned Trial Judge held that since no reasonable explanation has been given by the defendant for the delay which prevented the defendant from bringing those facts on record prior to the commencement of the trial of the suit, the proposed amendment cannot be allowed. The learned Trial Judge also held that the proposed amendment is not necessary for determination of the real controversy in the suit. As such the defendant's prayer for amendment of written statement was rejected by the learned Trial Judge by the impugned order passed on 5th May, 2010.

7. The propriety of the said order is under challenge in the application under Article 227 of the Constitution of India at the instance of the defendant/petitioner herein. Heard Mr. Thakkar, learned

Advocate, appearing for the petitioner and Mr. Sudhis Dasgupta, learned Senior Counsel, appearing for the plaintiff/opposite party. Considered the materials on record including the order impugned. Let me now consider as to how far the learned Trial Judge was justified for passing the impugned in the facts of the instant case.

8. At the very out set this Court wants to mention that since the suit for eviction was filed by the plaintiff against the defendant sometime in 2000, the proviso added to Order 6 Rule 17 of the Code of Civil Procedure, 2002, has no manner of application in the instant suit. As such the findings which were arrived at by the learned Trial Judge with regard to the application of the proviso to Order 6 Rule 17 of the Code of Civil Procedure in the facts of the instant case cannot be approved. As such the defendant's prayer for amendment cannot be rejected on the said ground. However, the Court cannot ignore the delay altogether even if the said proviso is not applicable in the present case. In case of long delay, some explanation for such delay is reasonably expected to ascertain the loss which the other side may suffer on account of such delay. Again if the facts which a party is seeking to introduce in his pleading, were available to him at the time of presentation of his pleading in the suit, then the party applying for such amendment must explain as to why he could not bring those facts on record at the time of delivery of his original pleading. Of course, delay itself cannot be a ground for rejection of an application for amendment when amendment is necessary for complete adjudication of the dispute and/or for avoiding multiplicity of proceedings, provided the proposed amendment is a bona fide one and it can be allowed without causing injustice to the other side.

9. It is, however, well-accepted principle of law that the Court normally takes a liberal approach while considering a prayer for amendment of plaint and in case of written statement, the court takes much more liberal approach in allowing the defendant to amend the written statement. But even then, it cannot be held that allowing amendment is an automatic process and whatever amendment will be sought for by any of the parties, should be allowed. There are some yardstick which cannot be ignored while considering the party's prayer for amendment of his pleading. Before granting leave to a party to amend his pleading, the Court must primarily be satisfied as to whether amendment which is sought for, is necessary for complete adjudication of the dispute involved in the suit or not. The Court must also consider that if the proposed amendment is allowed, then the order allowing such amendment may cause any injustice to the other parties or not. The Court must also consider as to whether a party who is seeking to amend his pleading is in

fact trying to withdraw his admission from his pleading in a calculative way with a view to disloging the other side from availing of the benefits of such admission of the party applying for amendment, in his original pleading. Though withdrawal of admission is not permissible but admission can be explained away by amendment.

10. It is also equally settled that inconsistent pleadings can be allowed to be raised in the written statement by way of amendment but if the pleading which is sought to be introduced in the written statement by way of amendment is mutually destructive to the pleadings already made by the defendant in the original written statement, then the Court will not hesitate to refuse to grant leave to the defendant to amend his written statement.

11. Several decisions were cited by the learned Advocate for the petitioner to show that the Court should take a liberal approach while considering the defendant's prayer for grant of leave to amend his written statement and even an inconsistent plea can be allowed to be raised by the defendant by way of amendment of his written statement and delay itself cannot be a ground for refusing to grant leave to amend the written statement, provided the amendment is necessary for complete adjudication of the dispute involved in the suit. These are the following decisions which were cited by Mr. Takkar in support of his aforesaid submission:

i) in the case of Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors. reported in AIR 2007 Supreme Court 1663(1);

ii) in the case of (2000) 1 Supreme Court Cases 712;

iii) in the case of Shri Iswar Jagannath Deb Jew vs. Fatik Chandra Seal & Ors. reported in AIR 1972 Calcutta 372.

iv) in the case of Bibhas Chandra Bose vs. Sm. Dolly Bose nee Dutta reported in AIR 1989 Calcutta 190;

v) in the case of Dondapati Narayana Reddy vs. Duggireddy Venksatanarayana Reddy & Ors. reported in AIR 2001 Supreme Court 3685.

12. Relying upon the aforesaid decision Mr. Takkar submitted that since the defendant simply wanted to clarify the nature of his tenancy by way of amendment without deleting any part of his earlier pleading and further since the amendment, which was sought for, was really in nature of clarification of the existing pleadings made out in the original written statement, the learned Trial Judge ought not to have rejected the petitioner's prayer for amendment of written statement.

13. By relying upon another decision of the Hon'ble High Court in the case of Andhra Bank vs. ABN Amro Bank & Ors. reported in AIR 2007 Supreme Court 2511 Mr. Takkar further submitted that while considering the prayer for amendment of the written statement, the Court cannot consider the merit of the amendment.

14. Mr. Takkar thus invited this Court to interfere with the impugned order and allow his client to amend his written statement.

15. Mr. Dasgupta, learned Senior Counsel, appearing for the petitioner submitted that the proposed amendment is mostly repetition of the facts already pleaded in the written statement. As such major part of the proposed amendment, where simply reiteration of the original pleading was made, need not be allowed. Such amendment, according to Mr. Dasgupta, is not necessary.

16. Regarding the other part of the proposed amendment Mr. Dasgupta submitted that here is the case where the defendant in the original written statement admitted that he is a tenant in respect of the suit premised mentioned in the schedule of the plaint which is comprised of a godown measuring about 10,300 sq. feet. Though the defendant denied that the defendant is the premises tenant under the defendant in respect of the godown measuring about 10,000 sq. feet but it admitted its tenancy in respect of the schedule premises measuring about 10,300 sq. feet. The defendant also admitted in his original written statement that the defendant was inducted in the suit premises comprising of a burnt and dilapidated godown. Mr. Dasgupta further pointed out from the proposed amendment that the defendant is now seeking to introduce that the defendant was inducted as a tenant in respect of the bare land and thus the defendant became a thika tenant in respect of the suit premises and the interest of the Jamindar has been vested in the State on the date of vesting.

17. Mr. Dasgupta submitted that the stand which the defendant is now seeking to introduce by way of amendment of the written statement viz. the defendant was inducted as a thika tenant in respect of the bare land, is mutually destructive to its original defence made out by the defendant in its original written statement wherein the defendant admitted that the defendant was inducted as a tenant in respect of a burnt and dilapidated godown. Mr. Dasgupta further pointed out that the defendant also filed an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956, admitting therein that the defendant is a premises tenant in respect of the suit premises. Mr. Dasgupta thus submitted that if the defendant is now permitted to amend his written statement for introducing the proposed amendment, such an order allowing amendment will certainly cause

prejudice to the right of the plaintiff as the plaintiff will have to face de novo trial of the suit in case such amendment is allowed. Mr. Dasgupta relied upon the following decisions of the Hon'ble Supreme Court in support of his submission that mutually destructive pleas cannot be allowed to be introduced by amendment of written statement, though inconsistent plea can be allowed to be raised by amendment:-

i) in the case of Heeralal vs. Kalyan Mal & Ors. reported in (1998) 1 Supreme Court Cases 278;

ii) in the case of Gautam Sarup vs. Leela Jetly & Ors. reported in (2008) 7 Supreme Court Cases 85.

18. After hearing the submission of the learned Counsel of the respective parties, this Court finds that here is the case where the defendant wanted to introduce a new defence which is not only inconsistent with and/or contrary to its original defence but also is mutual destructive to its earlier defence disclosed in the original written statement. The defendant originally pleaded that the defendant was inducted as a tenant in respect of a dilapidated and/or burnt godown and subsequently the defendant reconstructed the same and has been using the same for its business purpose while in the proposed amendment, the defendant wants to introduce that the defendant was inducted as a thika tenant in respect of a bare land together with the right to construct on it and on the strength of such authorization the defendant constructed the godown therein and has been using the same for business purpose. The clear and unambiguous admission regarding its status as that of a premises tenant in the suit premises which was made by the defendant in its application under Section 17(2) of the said Act, cannot be lost sight of by this Court. The defendant allthroughout maintained its stand, that the defendant is a premises tenant in respect of a burnt and dilapidated godown which was subsequently reconstructed by the defendant. The defendant never contended earlier that the defendant is a thika tenant of the bare land on which it constructed a godown. The defendant has not prayed for deletion of its earlier stand regarding its tenancy right in the suit premises under the Premises Tenancy Act, 1956. The defendant cannot maintain two different stands which are mutually destructive to each other.

19. Thus on the face of it, the proposed amendment, in my view, is mutually destructive to the original pleading of the defendant. The proposed amendment is not a bona fide one. If this amendment is allowed, then the plaintiff will be deprived of extracting the benefit of the admission

regarding the nature of the tenancy made in the original written statement. That apart the proposed amendment has a far reaching effect. If the amendment as sought for, is allowed at the stage of trial of suit, the plaintiff will be non suited, as he cannot maintain the suit on the basis of the cause of action pleaded in the plaint. As such this court holds that it is a mala fide application.

20. Under such circumstances this Court holds that the defendant cannot be permitted to amend his written statement for introducing a completely new defence which, if is allowed, will require a de novo trial of a completely new issue and thereby the scope and/or ambit and/or dimension of the suit will be unnecessarily expanded. As such, the said amendment cannot be allowed.

21. Major part of the proposed amendment practically covers repetition of the pleadings regarding the dispute between the parties relating to existence of relationship of landlord and tenant, which are already on record. This part of the proposed amendment is not necessary. That apart the effect of the order passed on the defendant's application under Section 17(2) of the said Act, is a legal consequence, which need not be brought on record by amendment. As such this part of the amendment is also not necessary.

22. Even if it is true that the proviso to Order 6 Rule 17 of the Code of Civil Procedure is not applicable in the instant case but still then since the proposed amendment is not subsequent event and further since the proposed amendments were also available to the defendant at the time of filing of its original written statement, the defendant is required to explain the reason which prevented the defendant from bringing those facts on record at the time of filing the original written statement. No explanation is forthcoming from the defendant in this regard.

23. Thus on overall consideration of the defendant' prayer for such amendment, this Court does not feel any necessity to interfere with the impugned order. The revisional application, thus, stands rejected.

24. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)