

Mulk Raj Batra and Others

Vs

District Judge, Dehra Dun and Others

Civil Appeal No. 1494 of 1981

(D. A. Desai, Baharul Islam JJ)

14.04.1981

JUDGMENT

DESAI, J. -

1. Special leave to appeal granted.

2. The only dispute in this appeal is whether the application for amendment of the written statement under Order 6, Rule 17 should be allowed as a whole or in part as has been done by the learned District Judge and confirmed by the High Court in revision. The real dispute is with regard to para (16-A) in the proposed amendment extracted at page 5. The contention which found favour with the High Court is that by this paragraph, the appellant seeks to reopen the concluded findings of facts about the personal requirement of the respondent-landlord. Respondent 2, Lal Krishan referred to as landlord commenced an action for eviction of appellants inter alia on the ground of his personal requirement. Courts including the High Court accepted the case that landlord requires premises involved in the suit for his personal requirement. It is obligatory for the courts while granting decree for eviction on the ground of bona fide personal requirement to comparatively assess the hardships of the landlord as well as the tenant relevant to passing the decree for eviction or refusing to pass the same and mould the decree in accordance with the assessment of hardship. When the matter was before High Court, it was urged on behalf of appellants that they would suffer greater hardship compared to landlord if a decree in ejectment is passed. The High Court was of the opinion that the issue of hardship was not properly examined by the first appellate court and accordingly while confirming the finding on the issue of personal requirement of the landlord, set aside the decree and remitted the matter of first appellate court to re-examine the issue of comparative hardship and to mould the decree in accordance with the finding. Pursuant to the direction of the High Court when the matter went back to the first appellate court, the appellants-defendants moved an application under Order 6, Rule 17 for amendment of the written statement, which was allowed in part rejecting a part of the amendment sought as set out in para (16-A) on the ground that thereby the appellants-defendants are surreptitiously attempting to reopen the concluded findings between the parties and thereby circumvent the finding concluded by the High Court which was impermissible. In our opinion this approach wholly overlooks that are the relevant considerations in comparative evaluation of hardship. The allegations or facts alleged in para (16-A) have a direct bearing also on the issue of comparative hardship and that is unavoidable. Mr P.H. Parekh, learned Advocate for respondent 2 could not controvert this aspect. Therefore, the first appellate court indulged in self-contradiction when it allowed the amendment in part and rejected the other part which also bears on the subject of comparative hardship. This is a glaring error apparent on record and in the interest of justice we want to interfere. Therefore, having heard Mr S.N. Kacker and Mr P.H. Parekh, we are of the opinion that the amendment as a whole ought to have been allowed. Accordingly, we allow this

appeal and direct that para (16-A) should be incorporated in the written statement by way of amendment. It would be open to respondent 2 landlord to file his replication to the amendment written statement.

3. As the matter is pending for a long time, the learned District Judge before whom the appeal is pending should expedite its hearing and dispose it of as expeditiously as possible. Appeal allowed to the extent indicated herein with no order as to costs.

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