

**SUPREME COURT OF INDIA**

M.C.D.

Vs.

Hem Raj

S.L.P. (C) No. 20641 of 2003

(S. R. Babu and G. P. Mathur JJ.)

16.02.2004

**JUDGMENT**

**S.R.Babu, J.**

1. Leave granted.
2. The appeal is allowed in terms of the signed order. The trial Court shall bear in mind the long pendency of the matter and dispose of the suit as expeditiously as possible. The costs awarded in allowing the application for amendment shall not be costs in the cause.
3. This matter arises out of an order made in a Revision Petition by the High Court which arose out of certain proceedings in a suit wherein an application relating to amendment of the written statements had been filed. The High Court noticed that the suit was pending since 1994; that the application for amendment was highly belated and was not at all necessary; that no such amendment as was sought for by the defendant-M.C.D( hereinafter referred to as the appellant ) in the application can possibly be allowed; that the trial Court had not acted with any material illegality, irregularity or infirmity and on that basis dismissed the Revision Petition.
4. The trial Court held that the Respondent had filed a suit for permanent injunction in respect of certain lands and when the appellant threatened the respondent and obstructed him from raising boundary wall, the respondent filed the suit; that the defence of the appellant is that the land in dispute was handed over to them by DLF and the respondent was encroacher of the municipal public land; that the amendment prayed for is not at all necessary for effective adjudication of the matter; that the matter had not been pursued with necessary diligence and, therefore, rejected the prayer for amendment.
5. We have been taken through the pleadings raised in the case and the amendment sought for. Learned counsel for the respondent very lucidly put forth before us that the appellant had in fact admitted the contents of paragraph 3 of the plaint that Greater Kailash colony was developed by DLF Ltd. He further pointed out that what is sought to be added will be

inconsistent to the earlier plea and will take away the effect of the statement made on the earlier occasion.

6. Firstly, we notice that the courts are ordinarily liberal in the matter of amendment of the written statements and necessarily not with the same strictness as is done in respect of the amendment of a plaint. Further, it is also not unusual that inconsistent statements are allowed to be raised in the written statements. That circumstance by itself will not defeat such pleas being raised. If the appellant wants to set out facts to explain certain situations, the same could be done.

7. What is alleged by way of pleadings will have to be established by evidence by the parties. Merely because there is some delay in raising such pleas, it will not disentitle the parties from raising the same, and it is not as though such inconvenience caused to the parties cannot be compensated in terms of costs. In the circumstances of the case, we think that the order made by the trial court, as affirmed by the High Court should be set aside and the amendments are allowed to be included in the written statements, subject to the condition of payment of costs in a sum of Rs. 5, 000/- which shall be paid to the respondent within one month from today and within same time amended written statement shall be filed. The appeal is allowed accordingly.

8. The trial Court shall bear in mind the long pendency of the matter and dispose of the suit as expeditiously as possible. The costs awarded in allowing the application for amendment shall not be costs in the cause.