

SUPREME COURT OF INDIA

Sushil Kumar Jain

Vs.

Manoj Kumar

C.A.No.3236 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

05.05.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. This appeal is directed against the order dated 15th of July, 2008 passed by a learned Judge of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3700 of 2008, by which the Civil Revision case filed by the tenant/appellant was rejected, affirming the order passed by the Rent Controller, Chandigarh, by which the Rent Controller had rejected the application for amendment of the written statement under Order 6 Rule 17 of the *Code of Civil Procedure* (in short "the CPC") filed by the appellant.

3. The landlords/respondents have filed an ejectment proceeding in respect of the Main Gate and Covered First Floor of Shed No. 771, Industrial Area, Phase-II, Chandigarh (hereinafter referred to as the "demised premises"). This ejectment proceeding has been filed under section 13 of the *East Punjab Rent Restrictions Act* (in short, the "Act"), in which under paragraph 2 the appellant has been described as a tenant in respect of the demised premises. In view of the controversy raised before us, it would be appropriate to produce paragraph 2 of the said petition, which is, as hereinunder: "Paragraph 2: Respondent is a tenant in respect of premises describable as Main Gate and Covered First Floor of Shed No. 771, Industrial Area, Phase II, Chandigarh."

4. Be it mentioned herein that this is a paragraph, which has sought to be amended that has resulted in controversy between the parties. The appellant has entered appearance and filed a written statement denying the material allegations made in the said petition under Section 13 of the Act. So far as the statements made under Paragraph 2 of the ejectment proceeding is concerned, the appellant made the following averments: "Paragraph 2: That Paragraph 2 of the petition is also admitted to be correct. It is however submitted that the respondent is occupying other areas of 771 Industrial Area, Phase II, Chandigarh as well under different tenancies." So far as the other statements made in the ejectment proceeding are concerned,

the appellants denied the allegation made therein and sought for rejection of the ejectment proceeding.

5. During the pendency of the ejectment proceeding under Section 13 of the Act, more precisely, on 6th of June, 2008, an application under Order 6 Rule 17 of the CPC was filed by the appellant, praying for an amendment of the written statement stating inter alia that there was inadvertently some confusion and misstatement of facts which needed to be rectified and that the proposed amendment was necessary for adjudication of the real matter in controversy. The amendment sought for clearly stated that there are three different portions under one tenancy and not different portions under different tenancies, which can be evident from the original written statement filed by the appellant. By filing the application for amendment of the written statement, the appellant sought deletion of the words "under different tenancies", what was sought to be removed was the contradiction and confusion having been raised in the written statement which was never intended to be an admission. The appellant further alleged that by amendment he sought to explain and adopt a different and inconsistent plea in the written statement. However, it would be appropriate for us to reproduce the amendment prayed for which is in the following manner :

"4. That in para 2 of the reply the word "under different tenancies" be deleted.

5. That para 3 of the reply be substituted with the following paragraph :- That para 3 of the petition as stated is not correct and is thus, denied. It is, however, admitted that the respondent came in the premises initially in an area of 15 X 45' facing main road on a monthly rent of Rs.5000/-. Subsequently, in the year 2003 more portion was added, i.e. main gate facing Taj Furniture and the First Floor and the rent of all the three portion was agreed to be Rs. 7000/-. Rs. 5000/- per month had been paid through payee's account cheques and Rs. 2000/- per month had been paid in cash for which no receipt has been issued by Manoj Kumar. The total rent up to December, 2007 has been paid in the above-said manner. It is wrong and denied that the monthly rent was payable in advance by 7th of each month or that it was required to be increased by 5% each year. The respondent continued to pay Rs. 7000/- per month to Manoj Kumar who had been receiving the rent each month till the month of December, 2007. It is respectfully submitted that there has been very cordial relations between Manoj Kumar and the Respondent and there was lot of trust and confidence and because of the Trust and confidence, the Respondent had been payment Rs. 2000/- per month in case without obtaining the receipt and has paid the entire rent up to December, 2007. The Respondent is ready and willing to pay the rent @ Rs. 7000/- per month from 01.01.2008 onwards. The petitioner has exploited the good relationship and after receiving the rent in case till December, 2007, he has filed the present petition.

6. That para 4 of the reply be allowed to be amended and the word "November" occurring in second line be substituted with the word "December". In the 4th line, the word "December, 2007" be substituted with 1st "January, 2008."

7. That likewise the word "November" 2007 be substituted with word "December" 2007 occurring in sub-para (i) of para 5 and the word "December, 2007" be substituted with "January, 2008".

8. That the proposed amendment is necessary for the adjudication of the matter in controversy. The amended reply is filed herewith."

6. The learned Rent Controller, Chandigarh, rejected the application for amendment of the written statement inter alia holding that if such amendment was allowed, the appellant would be permitted to withdraw his admissions made in the original written statement, which is not permissible in law. The High Court affirmed the order of the Rent Controller similarly holding that the appellant shall not be permitted to withdraw the admission made in the original written statement and accordingly, rejected the Civil Revision case.

7. Feeling aggrieved, the appellant has filed a Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties.

8. We have heard the learned counsel for the parties and examined the impugned order as well as the order of the learned Rent Controller. We have also examined the pleadings in the ejectment proceeding under section 13 of the Act, the original written statement and the application for amendment of the written statement. In our view, the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in rejecting the application for amendment of the written statement on the ground as stated hereinabove. After going through the pleadings in the amendment petition as well as the original written statement, we fail to understand why such amendment should not be allowed. In our view, having considered the averments made in the application for amendment of the written statement, it cannot be said that in fact neither any admission was made by the appellant in his original written statement nor the appellant had sought to withdraw such admission made by him in his written statement.

9. That apart, a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.

10. At this stage, we may remind ourselves that law 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. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action (See *Baldev Singh & Ors. vs. Manohar Singh & Anr.*¹).

11. Similar view has also been expressed in *Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.*². It is equally well settled that in the case of an amendment of a

written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.

12. Keeping these principles in mind, let us now take up the question raised before us by the learned counsel for the parties. As stated herein earlier, the admission made by a defendant in his written statement can be explained by filing the application for amendment of the same. This principle has been settled by this Court in *Panchdeo Narain Srivastava Vs. K. Jyoti Sahay*³, while considering this issue, held that the admission made by a party may be withdrawn or may be explained. It was observed in paragraph 3 of the said decision as follows:-

"An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment, an admission of fact cannot be withdrawn....."

13. In view of our discussions made hereinabove and applying the principles laid down by this court in the aforesaid decisions, we are therefore of the view that the High Court as well as the learned Rent Controller had acted illegally and with material irregularity in the exercise of its jurisdiction in not allowing the application for amendment of the written statement of the appellant.

14. Before parting with this judgment, a short submission as advanced by the learned counsel for the respondents may be dealt with. Referring to the proviso to Order 6 Rule 17 of the CPC, the learned counsel for the respondents argued that the proviso clearly bars that any application for amendment either of plaint or of written statement can be allowed after trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Therefore, the learned counsel for the respondents submitted that in view of the proviso to Order 6 Rule 17 of the CPC, the High Court as well as the Rent Controller had acted within their jurisdiction in rejecting the application for amendment of the written statement on the ground that the trial has already commenced and, therefore, no interference can be made in respect of the same.

15. We are unable to agree with this submission of the learned counsel for the respondents. In this case, in our view, the trial has not yet commenced. In para 17, of *Baldev Singh (Supra)*, this Court observed :- "It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinafter, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which

confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

16. In view of the aforesaid decision and in view of the admitted fact that not even the issues have yet been framed, documents have not yet been filed, evidence has not yet been adduced, we are of the view that the proviso to Order 6 Rule 17 of the CPC has no manner of application as the trial has not yet commenced.

17. Accordingly, the impugned order of the High Court as well as that of the Rent Controller, Chandigarh, is set aside. The application for amendment of the written statement is thus allowed. The Rent Controller, Chandigarh, is directed to permit amendment of the written statement and, thereafter, proceed with the hearing of the eviction proceeding. The Rent Controller, Chandigarh is directed to dispose of the ejection proceeding within six months from the date of supply of a copy of this order to it.

18. Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.

¹*AIR 2006 SC 2832*

²*AIR 2007 SC 1663*

³*AIR 1983 SC 462*