

Sunil Kumar Kataria Vs. Suraksha Devi

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Court : Allahabad

Decided On : Oct-11-2013

Judge : B. Amit Sthalekar

Appeal No. : Writ. A. No. 53725 of 2013

Appellant : Sunil Kumar Kataria

Respondent : Suraksha Devi

Advocate for Pet/Ap. : Sri. K.M. Garg, Ms. Manmeet Arora, Mr. Kapadia

Judgement :

B. Amit Sthalekar,J.

This is a writ petition at the behest of the petitioner seeking quashing of the order dated 29.7.2013 passed by the Civil Judge (Senior Division), Prescribed Authority in P.A. Case No.06 of 2011, Smt. Suraksha Devi Vs. Sunil Kumar Kataria.

The genesis of the case may be briefly encapsulated. The respondent filed an application under Section 21(1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 13 of 1972) against the petitioner being P.A. Case No. 06 of 2011 for release of the shop in question. The petitioner-tenant file his written statement alleging that the application has been filed with a mala fide motive inasmuch as the respondent had several shop properties in Bijnor itself and therefore, there was no bonafide need for the shop in question. In the written

statement, it was further alleged that earlier also the respondent had filed a similar P.A. Case No. 02 of 1999 under Section 21 (1) (a) of the Act 13 of 1972 for release of the shop in question. The bonafide need as stated was that the son of the respondent, namely, Deepak Khurana was unemployed and married and needed the shop for his personal use. It was stated that the rent of the shop was Rs. 250 per month which was subsequently raised to Rs. 400 per month since November, 2000 and besides the parties had entered into a compromise that the rate of rent would thereafter be enhanced by 15% after every four years and 10 months and no alteration in the shop in question would be made. The compromise was stated to have been entered into on 17.1.2000 and in pursuance of this compromise between the same parties, the P. A. Case No. 02 of 1999 was decreed in terms of the compromise. This fact according to the petitioner, had not been disclosed by the respondent in her plaint application and was brought on record for the first time in the written statement filed by the petitioner.

Subsequently, an amendment application under the provisions of Order VI Rule 17 CPC was filed on 20.9.2012, wherein, it has been stated that Deepak Khurana son of the respondent has one son named Vibhor Khurana, who was born on 5.7.2001 and one daughter who is about 7 years of age. The petitioner filed his objection to the amendment application on 31.1.2013 again stating that earlier the respondent had filed P.A. Case No. 02 of 1999, which had been decreed in terms of the compromise arrived at between the parties, wherein, the respondent had agreed that he would not file any application for release of the disputed shop. It was further submitted that the respondent owned several shops in Bijnor and the need of Deepak Khurana was not bonafide. The Prescribed Authority, however, by the impugned order dated 29.7.2013 has allowed the amendment application.

Hence, the present writ petition.

I have heard Sri K.M. Garg, learned counsel for the petitioner.

It has been submitted by the learned counsel that the amendment application under Order VI Rule 17 CPC could not have been allowed inasmuch as by bringing on record certain facts the respondent had set up an entirely new case changing the nature of the plaint case. It was further submitted that the respondent

in his application had not disclosed the fact of his filing the earlier P.A. Case No. 02 of 1999, which was decreed in terms of the compromise entered into between the respondent and the petitioner and it was agreed by the respondent that she would not file any future case for release on the basis of bonafide need. The non-disclosure of this fact, according to the learned counsel for the petitioner, amounted to deliberate concealment of fact and therefore, the amendment application should have been thrown out on this ground alone. It was further submitted that the need of Deepak Khurana was bonafide because Deepak Khurana had a son, Vibhor Khurana who was born on 5.7.2001 and also had a daughter who is about seven years of age, were new facts. The learned counsel for the petitioner further submitted that while allowing the amendment application the Prescribed Authority had considered the admissibility of the facts regarding the previous compromise decree in P.A. Case No. 02 of 1999 and observed that any such compromise between the parties whereby the respondent stood restrained from taking any future legal recourse was a void contract and hit by the provisions of the Indian Contract Act, and therefore this finding at the stage of hearing of the amendment application had closed the right of the petitioner to dispute the question at the time of hearing on the release application itself. At the outset, the provisions of Order VI Rule 17 CPC may be reproduced below in order to be able to appreciate the controversy in its proper perspective. Order VI Rule 17 reads as follows:

"[17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the 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 trial.]"

From a reading of the provisions of Order VI Rule 17 what becomes clear is that an amending party may be allowed to alter or amend his pleading:

1. on terms which may be just,
2. All such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties,
3. no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

That necessarily leads to the question as to when does a trial commence.

In 2005 4 SCC 480 Kailash Vs. Nanhku, the Supreme Court has held that in a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. Para 13 of the said judgment reads as follows:

"13. At this point the question arises : When does the trial of an election petition commence or what is the meaning to be assigned to the word 'trial' in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and upto the date of decision therein are included within the meaning of the word 'trial'."

In the case reported in (2009) 2 SCC 409, Vidyabai and Others Vs. Padmalatha and Another the Supreme Court has held that the date on which the issues are framed is the date of first hearing . Para 11 of the said judgment reads as follows:

"11. The question as to whether the documents should have been called for or not by the court without there being the amended written statement before it may be

considered afresh. The trial had commenced. The date on which the issues are framed is the date of first hearing. Various steps under CPC are taken at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the witness would amount to "commencement of proceeding".

In the case of Vidyabai (supra) the Supreme Court has followed its earlier judgment in the case of Kailash Vs. Nanhku. In the present case the petitioner has not stated whether issues had been framed and trial begun. In carefully couched language all that has been stated in para 12 of the writ petition is that a written statement had already been filed. What has been stated is as follows:

"the written statement has already been filed and the case is at the stage of evidence and trial has already been started"

Thus in the absence of positive averments, it cannot be assumed that the trial in the present case has commenced and therefore, the provisions of Order VI, Rule 17 would not be applicable.

So far as the submission of the learned counsel that the respondent had deliberately not disclosed the filing of the earlier release application P.A. Case No. 02 of 1999, which ended in a compromise decree and therefore amounted to concealment of facts, the learned counsel for the petitioner has referred to the judgment of the Supreme Court in the case reported in AIR 1994 SC 853, S.P. Chengalvarya Naidu Vs. Jagannath and Others . In para 7 and 8 of the judgment it has been held as follows:

"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court,

must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

From a reading of the above paragraphs the question arises whether the filing of the earlier release application which ended in a compromise decree was a vital fact non-disclosure of which would amount to playing fraud upon the Court. From the facts stated in the writ petition itself, it appears that the earlier P.A. Case No. 02 of 1999 was also filed for release of the shop but thereafter the parties entered into the compromise to the effect that no future release application would be filed and that the rent would be enhanced at the rate of 15% every four years. The

question that arises, therefore is that would such a decree foreclose the right of the respondent land-lady from filing any future release application on the ground of bonafide need of her son in changed circumstances. It must be noted that in the present release application P.A. Case No. 06 of 2011 the bonafide need had been shown to be that of Deepak Khurana son of the respondent. It has been stated that Deepak Khurana has a son Vibhor Khurana who was born on 7.5.2001 and also a daughter who is about 7 years of age. These facts did not exist in the year 1999.

The question still remains whether non-disclosure of the earlier decree would amount to concealment of a vital fact which if had been disclosed would have resulted in the subsequent application in P.A. Case No. 06 of 2011 being completely thrown out. In my opinion the non-disclosure of the earlier compromise decree does not amount to concealment of a vital fact inasmuch as the non-existence of a bonafide need in 1999 would not mean that no such bonafide need could arise in future.

The learned counsel for the petitioner next submitted that having entered into a compromise and taken a decree in the terms of such compromise the respondent cannot now approbate or reprobate. In support of his submission he has relied upon the judgment reported in AIR 1956 SC 593, Nagubai Ammal and others Vs. B. Shama Rao and Others.

Having gone through the said judgment, I am of the view the same has no application to the case of the petitioner for the same reason as stated above, namely, if there was no bonafide need in the year 1999, it cannot be said that the land-lady cannot have a bonafide need on a future date, and therefore, a compromise entered into between the respondent and the petitioner in the P.A. Case No. 02 of 1999 cannot foreclose the right of the respondent to file a second application for release on a future date when a bonafide need genuinely arises.

The learned counsel has next relied upon the decision reported in A.I.R. 1980 Allahabad 78 Raj Narain V. Sukha Nand Ram Narain, wherein it was held that once the parties have entered into a compromise decree to the effect that the tenant shall not be evicted from the shop in question except on grounds of arrears

of rent for one year, an application for eviction on the ground of the landlord's personal need cannot succeed. That was a decision of a Division Bench of this Court which held that the covenant being in respect of a land are covenant which touches upon the concerned land demised. The learned counsel for the petitioner has particularly referred to paragraphs 13, 17, 18, 19, 20 and 21 of the judgment, which read as under:

"13. There is a clear distinction between 'privity of contract' on the one hand and 'privity of estate' on the other. Though there is no 'privity of contract' between an assignee of the lessor's right of reversion and the tenancy rights of the lessee, there is 'privity of estate' between such assignees. According to Cheshire,

"privity of estate describes the relationship between two parties they respectively hold the same estates as those created by the lease. This is the position where one holds the original reversion and the other the original term, or rather, the whole of what is now left of the original term. Thus there is privity of estate between, the lessor and an assignee from the lessee of the residue of the term; also between the lessee and an assignee of the reversion also between an assignee of the reversion and an assignee of the residue of the term....."

In the instant case, the petitioner indisputably is an assignee of the lessor's interests in the premises in question and consequently there exists 'privity of estate' between the petitioner and the opposite-parties even though the petitioner stepped into the shoes of the previous owners and landlords by virtue of an auction sale.

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17. It must be borne in mind that the Transfer of Property Act is not an exhaustive or consolidating Code (See *Satyabadi Behara v. Hirabati* ILR 1907 Cal 223; *Bangsa Das v. Gena Lal* 12 Ind. Cas. 155 *Mahommad Shafikul Haq. v. Krishna Gobinda* 47 Ind. Cas. 428 (Cal) *Chotesha v. Maktum Bi* AIR 1928 Nag 223). There

is judicial precedent for the view that where a case is not contemplated by any of the provisions of the T. P. Act, High Courts as Courts of Equity are entitled to administer principles of equity as laid down by English or Indian decisions not distinctly prohibited by statute. In *Ahmedabad Municipal Corporation v. Haji Abdul Gafur* AIR 1971 SC 1201 it has been held that it is axiomatic that the purchaser at a court auction takes the property subject to all the defects of title and the doctrine caveat emptor (let the purchaser beware) applies to such purchaser. A covenant running with the land creates no defect in the title of the purchaser but in its true character becomes an incident of the property itself. It strikes us as inequitable that the auction purchaser should be allowed to rid himself of such a covenant to the detriment of the lessee.

18. It was ultimately urged that because of the statutory provision contained in U. P. Act No. 13 of 1972 which entitled the landlord to obtain an order of eviction of his tenant on the ground of his personal need under Section 21 (1) (a) of that Act, the covenant which restricted the right of the lessor to evict his tenant only on the ground of non-payment of rent for a year stood obliterated. It is contended that the term in the lease being inconsistent with Section 21 (1) (b) of U. P. Act No. 13 of 1972 ceased to be of any legal effect. In support of this contention reliance was placed on the decision of the Supreme Court in *Waman Shrinivas Kini v. Ratilal Bhagwandas and Co.* (AIR 1959 SC 689) . That decision has, in our opinion, no relevance to the statute under consideration or to the facts of the present case. The material facts giving rise to the appeal before the Supreme Court were that the landlord had entered into an agreement permitting sub-letting by the lessee which was prohibited by Section 15 of the Bombay Hotel and Lodging House Rates Control Act. The Supreme Court held that the agreement was prohibited by Section 15 of the Act and consequently was void by reason of Section 23 of the Contract Act. A number of other cases were relied upon in which Section 23 of the Contract Act was pressed in aid for the purpose of holding particular clauses in agreement as void. Section 21 of U. P. Act No. 13 of 1972, does not prohibit a landlord from entering into a covenant of the nature we are concerned with by which the landlord confined his right to obtain eviction of his tenant on a certain specific ground, and relinquished his right to evict him on any other ground including his personal need. Under the general law of Landlord and Tenant, the

landlord has an unrestricted right to obtain possession of the property leased out to a tenant subject only to such restrictions as have been laid down with regard to termination of tenancy etc. provided for by the T. P. Act.

19. U. P. Act No. 13 of 1972 does not enlarge the rights which a lessor possessed either under the general law dealing with the subject of Landlord and Tenant or under the provisions of the T. P. Act. The Act has placed restrictions on the rights of the landlord to obtain eviction of his tenant on such grounds as are mentioned in Section 20 or 21 of U. P. Act No. 13 of 1972. Like the enactment which came up for consideration before the Supreme Court in *Trimbak Damodhar v. Assaram Hiranman* (AIR 1966 SC 1758) it is a piece of beneficial legislation conferring on the tenant additional rights and protection against eviction as a matter of public policy. If the lease deed had contained a covenant surrendering any protection provided to him by U. P. Act No. 13 of 1972 it might have been possible to successfully contend that such a covenant was against public policy and consequently void by reason of Section 23 of the Contract Act. There is nothing in the Act, however, to prevent the landlord from waiving such rights as have been left to him by U. P. Act No. 13 of 1972. There is no public policy involved in Section 21 of the Act as far as it restricts the rights of a landlord to obtain an order for the eviction of his tenant on certain limited grounds specified in that provision. For the principle enunciated above, we are fortified in our view by the decision of the Supreme Court in *Lachoo Mal v. Radhey Shyam* (AIR 1971 SC 2213). Section 1-A of U. P. Act No. 3 of 1947 made inapplicable the provisions of that Act to buildings constructed after the 1st January, 1951. In the case before the Supreme Court, the facts were that the appellant had been occupying a shop belonging to the respondent for a very long time on a specified monthly rent. In 1962 that is to say after the 1st January, 1951 since the respondent wanted to construct rooms on the upper storey of the shop for his own residence, the parties entered into an agreement on June 4, 1962 in which it was provided that the appellant would vacate the shop in his tenancy on the condition that as soon as the required construction had been completed he would resume possession of the shop. One of the terms of the agreement was that "after the construction of the shop, the first party shall be entitled to get the same amount as rent from the second party. All the sections of the U. P. Rent Control and Eviction Act shall be fully applicable to this house. The first party shall in no

case be entitled to derive benefits from it as the property built after 1-1-1951." After the shop had been reconstructed, as contemplated by the agreement the appellant entered into possession of the reconstructed shop and when he offered rent to the respondent, he declined to accept the same and the tenant was compelled to make the deposit of rent due, in court under Section 7-C of U. P. Act No. 3 of 1947. The respondent served a notice under the provisions of the T. P. Act purporting to terminate the tenancy of the appellant and instituted a suit for his ejectment for default in payment of rent and for damages. The trial court dismissed the suit holding that the appellant was entitled to the protection conferred by Section 3 of U. P. Act No. 3 of 1947 which was applicable. On appeal, the learned District Judge took a different view and decreed the suit. The High Court on appeal affirmed the judgment of the District Judge and took the view that the respondent was entitled to rely on Section 1-A of U. P. Act No. 3 of 1947 and the appellant could not be given the benefit of Section 3. The tenant consequently took the matter in appeal to the Supreme Court. The Supreme Court was called upon to decide the question as to whether it was open to the respondent-landlord to give up the benefit of Section 1-A of U. P. Act No. 3 of 1947 and waive it by means of an agreement of the nature which was entered into between the appellant and the respondent. After considering the various provisions of U. P. Act No. 3 of 1947 which in its scope and objective is very similar to the U. P. Act No. 13 of 1972, it was held that,

"The Act was enacted for affording protection to the tenants against eviction except in the manner provided by the Act At the same time it appears that the legislature was conscious of the fact that the Act might retard and slacken the pace of construction of new buildings because the landlords would naturally be reluctant to invest money in properties the letting of which would be governed by the stringent provisions of the Act. It was for that purpose that the saving provision in Section 1-A seems to have been inserted. The essential question that has to be resolved is whether Section 1-A was merely in the nature of an exemption in favour of the landlord with regard to the building constructed after January, 1, 1951 and conferred a benefit on them which they could give up or waive by agreement or contractual arrangement and whether the consideration or object of such an agreement would not be lawful within the meaning of Section 23 of the Indian

Contract Act."

20. The Supreme Court found it unable to hold that the performance of the agreement which was entered into between the parties in the case before it would involve an illegal or unlawful act. It was observed that:

"In our judgment Section 1-A was meant for the benefit of owners of buildings which were under erection or were constructed after January, 1, 1951. If a particular owner did not wish to avail of the benefit of that section there was no bar created by it in the way of his waving or giving up or abandoning the advantage or the benefit contemplated by the section. No question of policy, much less public policy, was involved and such a benefit or advantage could always be waived."

In the result, the appeal was allowed and the view taken by this Court was overruled.

21. As observed earlier in the Transfer of Property Act there was no restriction with regard to the grounds on which the landlord could obtain eviction of his tenant, except such as those to which the parties might have agreed. The effect of U. P. Act No. 1; of 1972 is that the landlord's right to obtain the eviction of his tenant has become confined to certain specified grounds. It is clearly open to the landlord to waive even such rights and confine his rights to evict his tenant on conditions specified in the agreement of the lease. There is no element of public policy involved in the landlord waiving such rights as have been left intact to him by the provisions of U. P. Act No. 13 of 1972."

A similar question as to whether a previous compromise entered into between the landlord and the tenant would be fatal to any subsequent application under Section 21 (1) (a) of the Act 13 of 1972 came up before the learned Single Judge of this Court in the case reported in 2007 (2) ARC 265, Sudhangshu Kumar Banerjee Vs. Radhey Charan Shan. In that judgment the Court has referred to a Division Bench judgment of this Court reported in 1988 ACJ 627, Haji Mohammad Amin Vs. VIIth Additional District Judge and Others, wherein the Division Bench of this Court has distinguished the earlier Division Bench decision in the case of Raj Narain (supra) (relied on by the learned counsel for the petitioner).

The learned Single Judge has also referred to the judgment of the Supreme Court reported in 1987 4 SCC 1, *Indramohan Lal Vs. Ramesh Khanna*, 2001 7 SCC 409, *Laxmi Das Bapu Das Darbar and Anr. Vs. Rudravva (Smt) and Ors.* Paras 22, 23, 24, 25 and 26 of the said judgment read as under.

" 22. A somewhat similar controversy was referred to a Division Bench to answer the question, whether an agreement between the parties that the landlord will have no right to evict the tenant from the premises in dispute so long as he continues to pay rent provides a complete immunity to a tenant from being evicted from the premises under any condition and precludes the landlord from pressing his application for release of the accommodation under Section 21(1)(a) of the Act even though the need of the landlord may be found to be very pressing, bonafide and genuine. The said question has been answered in favour of the landlord on the footing that a compromise does not take away the right of a landlord to bring the other side for ejectment, if other grounds exist or where he files an application for release under Sub-section (1) or (2) of Section 21 of the Act. It is *Haji Mohd. Amin v. VIIth Additional District Judge and Ors.* 1988 A C J 627. In the said case, a compromise which has been reproduced in the report, reads as follows:

œ(LANGUAGE)?

23. In this Division Bench decision, an earlier Division Bench decision in *Raj Narain Jain v. Firm Sukhnand Ram Narain and Ors.* MANU/UP/0163/1980 : AIR1980 All78 was distinguished with the following observation:

5... As Section 21(1)(a) is a provision entitling a landlord to apply for release on the ground of his or his family members personal need. Clause (b) of Sub-section (1) of Section 21 gives another ground of the landlord for release, that is, when the house is in dilapidated condition and is required re-construction after demolition. 1 the right of the petitioner-tenant, as claimed before us, is so absolute that neither Section 21(1)(a) or (1)(b) would apply that will create a situation which is abhorrent to law. A tenant cannot insist on living in a house although the accommodation is in a dilapidated condition. If that is conceded to, his property would come to ruins and in that even he would just watch standing by and doing nothing.

6. In fact there is a difference between Sections 20 and 21. Section 20 enumerates the various grounds on which a suit for ejectment can be brought by a landlord against the tenant whereas Section 21 takes care of the two situations mentioned therein for release of the parties on the ground specified therein. Before filing the application under Section 20, the tenancy would have to be terminated whereas such is not required by Section 21 of the Act. In *Sheikh Bundu v. State of U.P. and Ors.* 1977 A R c 454 (a) Division Bench of this Court held that both the proceedings are independent of each other being based on separate causes of action. What is debarred by the compromise arrived at in between the parties is that on the basis of the default already committed, which was the subject matter of Suit No. 123 of 1975, the tenant was not liable to be ejected. The compromise does not take away the right of a landlord to either bring a suit for ejectment if other grounds exist or where he files an application for release under Sub-sections (1) and (2) of Section 21 of the Act. By the compromise the parties intended only to settle the subject-matter, which was in dispute, in that case.

24. It has also taken note of a Judgment of the Apex Court in the case of *Indramohan Lal v. Ramesh Khanna* MANU/SC/0762/1987 : [1987]3SCR765 wherein the Supreme Court with reference to the provisions of Delhi Rent Control Act which are para materia with Section 21 of the U.P. Act No. 13 of 1972 has held that section is complete code itself. The Division Bench has clearly opined that the compromise entered into in a suit under Section 20 does not debar the landlord from moving an application for release under Section 21 of the Act. The said decision fully clinches the issue.

25. While preparing the judgment, I could lay my hand on a judgment of the Apex Court in *Laxmi Das Bapu Das Darbar and Anr. v. Rudravva (Smt) and Ors.* MANU/SC/0495/2001 : AIR 2001 SC3738 which is also on the subject, involved herein. The said decision, though was not relied by the either side, but needs to be noted. It was a case under Karnatak Rent Control Act. The tenant was holding fixed term lease of 99 years. Before expiry of lease of the said term an application for eviction of tenant was filed by the landlord on the ground of reasonable and bonafide requirement. A controversy arose as to what would be the effect of the lease deed for fixed term, the term of which has not expired vis-a-vis the release

application filed by the landlord on the ground of bonafide need. The Apex Court considered Section 21 of the Karnatak Rent Control Act, 1961 which is reproduced in para-16 of the judgment and decided the controversy by holding that Rent Control Act is a beneficial piece of legislation and non-obstinate clause therein will not in any way prejudice the right of a tenant under a fixed term lease and till the expiry of lease period, the application for eviction is not maintainable.

26. On first reading of the judgment of the Apex Court, one gets an impression that the law, as laid down therein, impliedly dis-approves the judgment of the Division Bench of this Court in the case of Haji Mohd. Amin (supra), but on a close reading of the said judgment it is not so. The central theme of the judgment of the Apex Court is on the word 'only' as used in Section 21 of that Act. The Apex Court has laid emphasis on the word 'only' with reference to ground of eviction and held that eviction of a tenant can be sought for only on the grounds mentioned therein and not on any other plea. To my, it appears that the observation made by the Apex Court should be read in the statutory set up as contained in Section 21 of the Karnatak Rent Control Act, 1961 and the same principle cannot be imported herein. The reason is that Section 21 of Karnatak Rent Control Act is *pari materia* to Section 20 of U.P. Act No. 13 of 1972 and not to Section 21 of U.P. Act No. 13 of 1972 which provides grounds of release in addition to the ground to filing suit for eviction, as provided under Section 20(2) of the Act.

In this view of the matter, I am of the view that the earlier compromise decree entered into between the respondent-landlady and the petitioner-tenant in P.A. Case No. 02 of 1999 would not foreclose the right of the landlady to file a subsequent application under Section 21 (1) (a) of the Act of 1972 under new and changed circumstances claiming bonafide need of the premises in question for her son Deepak Khurana and his family.

With regard to the proviso to Order VI Rule 17, the learned counsel has referred to a judgment of the Supreme Court reported in 2009 (2) ARC 445 Sneh Gupta Vs. Devi Sarup and others. The said judgement relates to a compromise decree. Paragraphs 23, 24 and 48 are the relevant paragraphs, which read as under:

23. The court has also a duty to prevent injustice to one of the parties to the litigation. It cannot exercise its jurisdiction to allow the proceedings to be used to work as substantial injustice.

A consent decree, as is well-known, is merely an agreement between the parties with the seal of the court superadded to it. {See Baldevdas Shivilal and Anr. v. Filmistan Distributors (India) P. Ltd. and Ors. (1969) 2 SCC 201 and Parayya Allayya Hittalamani v. Sri Parayya Gurulingayya Poojari and Ors. JT 2007 (12) SC 352: 2008 (1) ARC 125.

24. If a compromise is to be held to be binding, as is well known, must be signed either by the parties or by their counsel or both, failing which Order XXIII, Rule 3 of the Code of Civil Procedure would not be applicable.

(See Gurpreet Singh V. Chatur Bhuj Goel, (1988) 1 SCC 270) : 1988 SCFBRC 113.

In Dwarka Prasad Agarwal (D) By L.Rs. and Anr. v. B.D. Agarwal and Ors. (2003) 6 SCC230, this Court held:

32. The High Court also failed and/or neglected to take into consideration the fact that the compromise having been entered into by and between the three out of four partners could not have been termed as settlement of all disputes and in that view of the matter no compromise could have been recorded by it. The effect of the order dated 29-6-1992 recording the settlement was brought to the notice of the High Court, still it failed to rectify the mistake committed by it. The effect of the said order was grave. It was found to be enforceable. It was construed to be an order of the High Court, required to be implemented by the courts and the statutory authorities.

35...Even if the provisions of Order 23 Rule 3 of the Code of Civil Procedure and/or principles analogous thereto are held to be applicable in a writ proceeding, the Court cannot be permitted to record a purported compromise in a casual manner. It was suo motu required to address itself to the issue as to whether the compromise was a lawful one and, thus, had any jurisdiction to entertain the

same...

{See also K. Venkatachala Bhat and Anr. v. Krishna Nayak (d) by L.Rs. and Ors. (2005) 4 SCC 117}.

In R. Rathinavel Chettiar and Anr. v. v. Sivaraman and Ors. (1999) 4 SCC 89: 1999sCFBrC 181, this Court opined:

22. In view of the above discussion, it comes out that where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained."

48. Mr. Jayant Bhushan, then submits that as the principles of natural justice had been violated, the judgment would be a nullity. Strong reliance in this behalf has been placed on A.R. Antulay v. R.S. Nayak and Anr. 1988 Cri LJ 1661, wherein, it was stated:

55. Shri Jethmalani urged that the directions given on February 16, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under Section 7(1) of the 1952 Act read with Section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under Section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar case which was a binding precedent. A mistake on the part of the court shall not cause prejudice to anyone. He further added that the primary duty of every court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a

corrupt Chief Minister before a High Court, instead of a judge designated by the State Government was not injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions:

- (i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.
- (ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.
- (iii) The right of first appeal to the High Court under the same section.
- (iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.

We are concerned herein with a question of limitation. The compromise decree, as indicated hereinbefore, even if void was required to be set aside. A consent decree, as is well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable. It is not the law that where the decree is void, no period of limitation shall be attracted at all.

In *State of Rajasthan v. D.R. Laxmi* (1996) 6 SCC 445, this Court held:

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a

reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for; the award of the Court under Section 26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4(1) and declaration under Section 6.

Yet again, in *M. Meenakshi v. Metadin Agarwal* (2006) 7 SCC 470, this Court held:

18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.

Yet again, in *Sultan Sadik v. Sanjay Raj Subba*, (2004 2 SCC 377: 2004 (2) AWC 1560 (SC)), this Court held:

39. An order may be void for one and voidable for the other. An invalid order necessarily need not be non est; in a given situation it has to be declared as such. In an election petition, the High Court was not concerned with the said issue.

The learned counsel for the petitioner has also placed reliance on the case reported in 2009 (3) ARC 575 *Pyare Lal Mishra (Dr.) Vs. Bare Mahadevji Mahraj*.

In my opinion, in view of the judgment of the Supreme Court and of the learned Single Judge in the case of *Sudhangshu Kumar Banerjee* (supra) the case law relied upon by the learned counsel for the petitioner would have no application to

the facts of the present case.

Coming to the question as to whether the amendment application itself was correctly allowed or not reference may be made to certain decisions of the Supreme Court which might help to clear the cloud as to the grounds on which such amendment application should or should not be allowed. The Supreme Court in case reported in (2010) 4 SCC 518 State of Maharashtra Vs. Hindustan Construction Company Limited has held as follows in paragraphs 16, 17, 18, 19, 20, 21 and 22:

"16. Pleadings and particulars are required to enable the court to decide true rights of the parties in trial. Amendment in the pleadings is a matter of procedure. Grant or refusal thereof is in the discretion of the court. But like any other discretion, such discretion has to be exercised consistent with settled legal principles. In Ganesh Trading Co. v. Moji Ram¹ this Court stated :

"2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleading in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take."

17. Insofar as Code of Civil Procedure, 1908 (for short "CPC") is concerned, Order VI Rule 17 provides for amendment of pleadings. It says that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. The matters relating to amendment of pleadings have come up for consideration before courts from time to time. As far back as in 1884 in Clarapede and Company v. Commercial Union Association¹¹ - an appeal that came up before Court of Appeal, Brett M.R. Stated :

".....The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made....."

19. In *Charan Das and Others v. Amir Khan and Others*¹, Privy Council expounded the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

20. A four-Judge Bench of this Court in *L.J. Leach and Company Ltd., v. Jardine Skinner and Co.*¹ while dealing with the prayer for amendment of the plaint made before this Court whereby plaintiff sought to raise, in the alternative, a claim for damages for breach of contract for non-delivery of the goods relied upon the decision of Privy Council in *Charan Das and Others*¹; granted leave at that stage and held:

"It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."

21. Again, a three-Judge Bench of this Court in *Pirgonda Hongonda Patil* in the matter of amendment of the plaint at appellate stage reiterated the legal principles expounded in *L.J. Leach and Company Ltd. and Charan Das and others*¹. This Court observed :

"Recently, we have had occasion to consider a similar prayer for amendment in *L.J. Leach and Co. v. Jardine Skinner and Co.*, 1957 SCR 438, where, in allowing an amendment of the plaint in an appeal before us, we said: "It is no doubt true

that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice." These observations were made in a case where damages were originally claimed on the footing of conversion of goods. We held, in agreement with the learned Judges of the High Court, that on the evidence the claim for damages on the footing of conversion must fail. The plaintiffs then applied to this Court for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. The application was resisted by the respondents and one of the grounds of resistance was that the period of limitation had expired. We accepted as correct the decision in *Charan Das v. Amir Khan*, (1920) LR 47 IA 255 which laid down that "though there was full power to make the amendment, such a power should not as a rule be exercised where the effect was to take away from a defendant a legal right which had accrued to him by lapse of time; yet there were cases where such considerations were outweighed by the special circumstances of the case". As pointed out in *Charan Das* case the power exercised was undoubtedly one within the discretion of the learned Judges. All that can be urged is that the discretion was exercised on a wrong principle. We do not think that it was so exercised in the present case. The facts of the present case are very similar to those of the case before Their Lordships of the Privy Council. In the latter, the respondents sued for a declaration of their right of preemption over certain land, a form of suit which would not lie having regard to the proviso to s.42 of the Specific Relief Act (1 of 1877). The trial Judge and the first appellate court refused to allow the plaint to be amended by claiming possession on pre-emption, since the time had expired for bringing a suit to enforce the right. Upon a second appeal the court allowed the amendment to be made, there being no ground for suspecting that the plaintiffs had not acted in good faith, and the proposed amendment not altering the nature of the relief sought. In the case before us, there was a similar defect in the plaint, and the trial Judge refused to allow the plaint to be amended on the ground that the period of limitation for a suit under O. XXI, r.103 of the Code of Civil Procedure, had expired. The learned Judges of the High Court rightly pointed out

that the mistake in the trial Court was more that of the learned pleader and the proposed amendment did not alter the nature of the reliefs sought."

22. In *Jai Jai Ram Manohar Lal* this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held :

"....Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertance or even infraction of the Rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

This Court further stated :

"7.....The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

In (2011) 12 SCC 268 *State of Madhya Pradesh Vs. Union of India* and another the Supreme Court while considering Order VI Rule 17 has referred to its various earlier judgments and held as follows in paragraph 10:

"10) This Court, while considering Order VI Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) *Surender Kumar Sharma v. Makhan Singh*, (2009) 10 SCC 626, at para 5:

"5. As noted hereinearlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then

also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."

(ii) North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (dead) by LRS, (2008) 8 SCC 511, at para16:

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

(iii) Usha Devi v. Rijwan Ahamd and Others, (2008) 3 SCC 717, at para 13:

"13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in Baldev Singh v. Manohar Singh. In para 17 of the decision, it was held and observed as follows: (SCC pp. 504-05) "17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. 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 hereinbefore, 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 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings."

(iv) *Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others*, (2006) 4 SCC 385, at paras 15 and 16:

15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. 16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties."

(v) *Revajeetu Builders and Developers v. Narayanaswamy and Sons and Others*, (2009) 10 SCC 84, at para 63:

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

The above principles make it clear that Courts have ample power to allow the application for amendment of the plaint. However, it must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties."

The Supreme Court in the case reported in (2012) 5 SCC 337 Rameshkumar Agarwal Vs. Rajmala Exports Private Limited and others has held in paragraphs 21 and 22 as under:

"21) It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

22) In view of the fact that the amendment application came to be filed immediately after filing of the suit (suit came to be filed in 2007 and the amendment application was in 2008) i.e. before commencement of the trial and taking note of the fact that the learned single Judge confined the relief only to a certain extent and also that in the proposed amendment the plaintiff wants to explain how the money was paid, though necessary averments in the form of foundation have already been laid in the original plaint, we hold that by this process the plaintiff is not altering the cause of action and in any way prejudice defendants."

In paragraph 13 of the said judgment the Supreme Court has held that the proposed amendment merely introduced certain facts in support of the contention already pleaded in the original plaint details of payment of consideration had not been stated and by the amendment the plaintiff wanted to explain how the money was paid. The Supreme Court held that therefore, there was no inconsistency in the case of the plaintiff and the objection that the amendment was barred by limitation was also rightly rejected by the courts below. Paragraph 22 of the said judgment can also be examined closely inasmuch as the Supreme Court therein was dealing with the case where amendment applications are to be filed immediately after filing of the suit but before the commencement of the trial and has held that through the amendment application the plaintiff was not altering the cause of action nor causing any prejudice to the defendants.

In the present case also in the plaint/application under section 21(1)(a) of the Act 13 of 1972 filed as Annexure-4 to the writ petition, in paragraph 2 the respondent landlady has clearly mentioned that she needs the shop in question for the bonafide need of her son Deepak Kumar who also has a son who is studying in Class IV as well as a daughter who is studying in Class I and that the expenses of Deepak Kumar are slowly increasing and as he is unemployed she needs the shop for her son. In paragraph 1 of the amendment application, filed as Annexure-6 to the writ petition also the respondent has only further clarified that Deepak Khurana has a son who was born on 5.7.2001 and also has a daughter who was born thereafter and that his family expenses are increasing day by day. She has also referred to the filing of earlier application under section 21(1)(a) of the Act No.

13 of 1972 P.A. Case No. 2 of 1999 and has specifically stated that at that time she had no need of the shop in question but now since the family of her son Deepak Khurana has increased and his expenses have also increased, therefore, she needs the shop in question for the bonafide need of her son .

In (2012) 11 SCC 341 Abdul Rehman and another Vs. Mohd. Ruldu and others the Supreme Court while considering the validity of an amendment application has held that voidness of the sale deed was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deed sought by the amendment does not change the nature of the suit. Paragraphs 13, 17, 18, 19 and 20 of the said judgment read as under:

"13) Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended 9 plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

14)

15)

16)

17) In *Pankaja and Anr. vs. Yellapa* this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

18) We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

19) In the light of various principles which we have discussed and the factual matrix as demonstrated by learned counsel for the appellants, we are satisfied that the appellants have made out a case for amendment and by allowing the same, the respondents herein (Defendant Nos. 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire. Accordingly, the order of the trial court dated 06.06.2007 dismissing the application for amendment of plaint in Suit No. 320 of 2003 as well as the High Court in Civil Revision No. 4486 of 2007 dated 13.11.2007 are set aside. The application for amendment is allowed. Since the suit is of the year 2003, we direct the trial Court to dispose of the same within a period of six months from the date of receipt of copy of the judgment after affording opportunity to all the parties concerned.

20) The appeal is allowed. No order as to costs."

The learned counsel for the petitioner then referred to the judgment of the Supreme Court in the case reported in (2006) 4 SCC 385 *Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others*. This judgment has already been considered by the Supreme Court in the case of *State of Madhya Pradesh (supra)*.

The next judgment referred to by the learned counsel for the petitioner is the case of J. Samuel and others Vs. Gattu Mahesh and others reported in (2012) 2 SCC 300. This judgment has also been referred to and dealt with by the Supreme Court in the case of Abdul Rehman (supra) and it is a case where the amendment of the pleadings was sought after the commencement of the trial.

In the present case the pleadings in the writ petition do not mention the framing of issues. All that has been stated in paragraph 12 is that a written statement has been filed, and the case is at the stage of evidence and trial has already started. Therefore, the judgment in the case of J. Samuels has no application to the facts of the present case as the case of the petitioner in this writ petition does not fall within the proviso to Order VI Rule 17.

On the second objection with regard to the impugned order dated 29.7.2013, that while deciding the amendment application the Court could not have gone into the question of the compromise decree being void in view of the provisions of the Indian Contract Act, the learned counsel for the petitioner next referred to the judgment of the Supreme Court reported in (2007) 6 SCC 167 Andhra Bank Vs. ABN Amro Bank N.V. And others, paragraph 5 of the said judgment reads as under:

"5. We have heard Mr. Rohit Kapadia, learned senior counsel appearing for the appellant and Mr. S. Ganesh, learned senior counsel for the respondent. We have perused the original written statement as well as the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement, we are of the view that the amendment sought to be introduced by the appellant must be allowed. From a perusal of the impugned order of the Special Court we find basically that two grounds have been taken by the Special Court for rejecting the prayer for amendment of the written statement. The first ground is that considerable delay has been caused by the appellant in filing the application for amendment of the written statement. It is well settled that delay is no ground for refusal of prayer for amendment. Mr. Ganesh, appearing for ABN Amro Bank submits before us that by filing of such an application for amendment of the written statement which has been filed with long

delay, the appellant sought to stall the hearing of the suit which has been fixed on 13th July, 2007. In response to this Mr. Kapadia, learned counsel for the appellant, submits that in the event the prayer for amendment is allowed by us his client undertakes to file the amended written statement by day after tomorrow, i.e., 12th July, 2007 before the Special Court. Since, we are of the view that delay is no ground for not allowing the prayer for amendment of the written statement and in view of the submissions made by Mr. Kapadia, we do not think that delay in filing the application for amendment of the written statement can stand in the way of allowing the prayer for amendment of the written statement. So far as the second ground is concerned, we are also of the view that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit. From a perusal of the amendment application we find that the appellant in their prayer for amendment has only taken an additional defence that in view of Section 230 of the Indian Contract Act, the suit itself is not maintainable. It is well settled, as noted herein earlier, that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go into the fact whether in fact the suit in view of Section 230 of the Indian Contract Act was or is not maintainable."

From a reading of paragraph 5 it appears that two objections were raised on the filing of the amendment application. The first ground was that there was considerable delay in filing the amendment application which has been rejected by the Supreme Court. The second ground it appears is that in the amendment application an additional plea by way of additional evidence was raised that the suit itself was not maintainable in view of the provisions of Section 230 of the Contract Act. The Supreme Court held that at the time of considering the prayer for amendment of the written statement it would not be open for the court to go into the fact whether infact the suit in view of section 230 of the Contract Act was or was not maintainable.

The learned counsel for the petitioner, therefore, submits that the court below by holding that the previous compromise decree was void in view of the provisions of

the Indian Contract Act had actually decided the issue at the stage of the amendment application and, therefore, the amendment could not have been allowed. It is no doubt true that the court while dealing with an amendment application cannot enter into the question as to whether the suit is maintainable or not in view of the particular provision of law but in my opinion that itself does not render the amendment application bad inasmuch as the parties to the suit, in this case, the application under section 21(1)(a), would still have the right to lead evidence to establish whether the previous compromise decree was void in view of the provisions of the Indian Contract Act or not.

Therefore, in the factual matrix of the present case and the catena of decisions of the Supreme Court and of this Court in the case of Sudhangshu Kumar Banerjee (supra) referred to herein above, in my opinion the impugned order dated 29.7.2013 allowing the amendment application is correct and valid in law. However, it is provided that on the question as to whether the previous P.A. Case No. 2 of 1999 the compromise decree is void in view of the provisions of Indian Contract Act or not would still remain open and it would be open for the parties to lead their evidence on this question and that would be subject matter of the consideration by the Prescribed Authority at the time of final hearing of the application under section 21(1)(a) without prejudice to any observation made by him while allowing the amendment application.

For the reasons stated above, the writ petition, in my opinion, is devoid of merits and is accordingly dismissed.

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