

Abnash Kaur Vs. Avinash Nayyar and ors.

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SooperKanoon Citation : sooperkanoon.com/687619

Court : Delhi

Decided On : Apr-05-1974

Reported in : AIR1975Delhi46; 10(1974)DLT270; 1974RLR437

Judge : T.V.R. Tatachari,; V.S. Deshpande and; Yogeshwar Dayal, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17; [Delhi Rent Control Act, 1958](#) - Sections 14

Appeal No. : Civil Miscellaneous (Main) Appeal No. 269 of 1973

Appellant : Abnash Kaur

Respondent : Avinash Nayyar and ors.

Advocate for Pet/Ap. : R.L. Tandon,; G.C. Mittal,; Arun Mohan,;

Judgement :

V.S. Deshpande, J.

(1) While a petition by the landlord (Respondent No. 1) for the eviction of the tenant (petitioner) on the ground of non-payment of rent under clause (a) of the proviso to subsection (1) of section 14 of the [Delhi Rent Control Act, 1958](#) (hereinafter called the Act) was pending for some time, the landlord went to inspect the premises and is said to have found that the premises had been substantially damaged by the tenant.

(2) He, therefore, applied for an amendment of the petition for eviction with a view to add another ground for the eviction of the tenant under clause (j) of the proviso to sub-section (1) of section 14' namely, that the tenant has caused or permitted to be caused substantial damage to the premises. The Rent controller allowed the petition to be amended apparently because only an additional ground to claim the same relief of eviction was being added. The tenant (petitioner) has filed this petition under Article 227 of the constitution alleging that the said order of the controller allowing the amendment was without jurisdiction and beyond the scope of order VI rule 17 of the civil procedure Code and is liable to be quashed.

(3) In support of her contention, the petitioner mainly relied upon an unreported decision of Mehar Singh and S.B.Capoor.JJ. sitting as the circuit Bench of the Punjab High Court at Delhi holding that in a petition for eviction filed on existing grounds an additional ground arising subsequent to the filing of the petition cannot be added by way or amendment. Prakash Narain, J., before whom the petition came for hearing was of the view that the Division Bench decision perhaps required reconsideration and, therefore, referred the same question which had been decided by the Division Bench for the consideration of a Full Bench, namely:

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'HAS the rent controller under (Delhi Rent Control Act) Act 59 of 1958 power and jurisdiction to allow an amendment so as to add a new ground of eviction in an already pending eviction application, though the new ground of eviction occurred after the date of the institution of the pending application, if a ground or grounds of eviction other than the new ground have already been taken by the landlord against the tenant'?

(4) Application for amendment of petitions for eviction filed under the proviso to sub-section (1) of section 14 of the Act are frequently made. While orders made on such applications have grave consequences for the parties to the petition, nevertheless, the majority of such orders would be procedural in their nature and not ordinarily appealable. They would be challenged mostly, therefore, either in an appeal against the final decision of the Controller disposing of the eviction petition or by a petition under Article 227 of the Constitution. If in these

proceedings these orders are set aside, the cases are likely to be remanded to the Controller thus causing additional delay in their disposal. It is important, therefore, that all the relevant considerations bearing on the question whether an amendment should be allowed or disallowed should be borne in mind by the Controller. These relevant considerations may, therefore, be enumerated as below:-

(A) When an amendment of a pleading can and should be allowed:

(B) When it cannot or should not be allowed ;

(C) The nature of the grounds for eviction enumerated in the various clauses of the proviso to sub-section (1) of section 14 of the Act vis-a-vis the above considerations.

(A) When amendment can and should be allowed:-

(5) The words 'power and jurisdiction to allow an amendment' in this context do not mean the initial jurisdiction to entertain an application for amendment. The word 'jurisdiction' here has the same meaning as the word 'power'. Both point to the power given by the statutory provisions to the Court to either allow or disallow an application for amendment according as the requirements of the statutory provisions for allowing an amendment are satisfied or not. These statutory provisions are embodied in the code of Civil Procedure which are to be followed as far as may be by the Controller in view of section 37(2) of the Act and rule 23 of the Rules made there under. Power to order an amendment of any defect or error in any proceeding in a suit or motion is given to the Court by section 153 Civil Procedure Code

(1) 'on such terms as to costs or otherwise as it may think fit. and

(2) all necessary amendments may be made for the purpose of determining the real question or issue raised by or depending on such proceeding'. A similar provision is made by order VI rule 17 under which the Court may at any stage of the proceedings allow either party to amend his pleadings

(1) 'in such manner and on such terms as may be just, and

(2) all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties'. While construing the analogous language of section 149 of the Code of 1882 now replaced by Order XIV rule 5(1) of its existing code, rule Judicial Committee of the Privy Council at 222-223 that the first portion of the rule left the matter of framing of additional issues to the discretion of the Court while the second portion made it imperative on the Court to frame additional issues as may be necessary to determine the controversy between the parties.

(6) A learned commentator has, therefore, opined that Order VI Rule 17 is also in two parts, namely, (a) 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 (b) all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The suggestion is that (a) is discretionary while (b) is mandatory. (A.I.R. Commentaries on the Code of Civil Procedure, 8th Ed. Volume II. page 800).

(7) The essence or the mandatory part of Order VI Rule 17 is that an amendment, which must be permitted by the court, must relate to the real questions in controversy. What is the real question in controversy may be gathered from the following materials namely, (i) the legal relationship between the parties constituting their respective positions opposed to each other e.g. a landlord and tenant; a owner and a trespasser. a claimant and a counter claimant etc. and (2) the pleadings which have been actually made by the parties prior to the amendment which is sought. If a question has been referred to expressly in the pleadings or by necessary implication from the opposite stands taken by the parties, a clarification of such a question would make the amendment necessary to determine the real questions in controversy. As a rule. such amendment has to be allowed by the Court. This rule would, however, be in practice subject to two different kinds of exceptions. On the one hand the existing pleadings of the parties may not have referred to a question but in the interest of justice it would be proper for a party to raise it by way of amendment of his pleadings. Such an amendment

would be in the discretion of the court under the discretionary part of Order VI Rule 17. This discretion is so wide that the only consideration guiding the court would be that it should be in the interest of justice and should be allowed on such terms as may be just. On the other hand, even an amendment which may be necessary to determine the real questions in controversy may in an exceptional case be not allowed by the court if the court thinks it would be unjust to do so. An instance of such injustice may be that it would deprive the other party of a right which has accrued to it by the expiry of the period of limitation. Barring such exceptional cases, therefore, the general rule is that an amendment of pleadings should be allowed necessarily to determine the real questions in controversy and even otherwise if this would be in the interest of justice- The attitude of the courts to applications for amendment should, therefore, be sympathetic and the courts should, as far as possible, allow an amendment unless the exceptional circumstances of a particular case disable the court from allowing it.

(8) The pleadings of the parties may determine the frame of the suit and the scope of the matters in controversy. Amendment of pleadings, therefore, may affect the frame of a suit. The provisions of Order II should also, therefore, enable us to understand the nature of the real question in controversy. Order II rule 1 requires that the suit shall be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Order II rule 2 also requires the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action in every suit. If he omits or relinquishes any part of the same, he cannot sue in respect of it in a subsequent suit. Order II rule 3 allows a plaintiff to join several causes of action against the same defendant. Similarly, plaintiffs having causes of action in which they are jointly interested against the same defendants jointly may unite such causes of action in the same suit. While the frame of the suit must, therefore, include the whole claim in respect of a cause of action, it is not limited to only one cause of action but may include more than one against the same defendant. Order VII rule 1(e) requires the plaint to state the facts constituting the cause of action. Order VII rule 7 requires the plaint to state specifically the relief claimed simply or in the alternative but it is not necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been

asked for. Explanationn Iv to section 11 requires the parties to plead all the grounds of attack and defense which they might and ought to plead in a suit or proceeding. If they omit to do so, they would be barred from pleading them in a subsequent suit by the principle of constructive rest judicata.

(9) From the above provisions, the following inferences relevant for our purpose may be drawn :-

(A)Not only the whole of the claim based on a cause of action must be pleaded but all causes of action against the same defendant may also be pleaded in the same plaint. Indeed, if they are in the nature of different rounds to prove the case of the plaintiff and to obtain the proper relief, then they must be pleaded inasmuch as construetive rest judicata would bar them from being raised in a subsequent proceeding (Order li rules 2 and 3 and seection 11 (Expin. IV) and Rajdeo Singh v. Royal Studios. 1971 R.C.R. 818.

(B)Ordinarily, the plaintiff's case is restricted to the original cause of action pleaded. But to avoid a multiplicity of suits and also in view of the considerations enumerated in (a) above, subsequent events may also be allowed to be pleaded during the pendency of a proceeding by an amendment of the plaint.

(10) The Division Bench in Ram Gobind's case relied upon the general rule laid down, that the relief claimed in the suit must be confined to matters existing at the date when the suit was instituted and inferred there from that it was not open to the landlord in a petition for eviction against the tenant to claim the relief of eviction on a ground which was not available to him on the date on which the petition for eviction was instituted. Their lordships also relied on the decision holding that amendments proposing to add causes of action which have arisen after the institution of the petition for eviction or a suit can not be allowed. With respect however, it may be pointed out that exceptions in the interests of justice have been made to this general rule and causes of action or grounds of attack arisen after the institution of a suit or a petition for eviction have been allowed to be added by way of an amendment was pointed out by the Supreme Court that the suit was filed in 1942 while the second Kuthakapattom was granted in 1948. By the grant of Kuthakapattom in 1948 the possession of the society became not only de jacto but

also de jure. But in the absence of an application for amendment, the suit was decided by the trial Court without taking note of the second Kuthakapattom. During the pendency of the appeal in the High Court, the application for amendment pleading the effect of the Kuthakapattom was made after the argument and literally on the eve of the judgment. The High Court rejected the application as belated and decreed the suit against the society. At page 185 of the report, the Supreme Court considered the question whether the High Court should have allowed the amendment late as it was. Speaking for the Court Hidayatullah, J., observed at pages 185, 186 and 187 as follows:-

'NOW it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals..... To this proposition there are a few exceptions. Sometimes it happens that the original relief claimed becomes inappropriate, ' or the law changes affecting the rights of the parties. In such cases courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuity of action the courts allow an amendment..... Amendment is a discretionary matter and although amendment at a late stage is not to be granted as a matter of course, the court must bear in favor of doing full and complete justice in the case where the party against whom amendment is to be allowed can be compensated by costs or otherwise..... Without the amendment another suit based on the second Kuthakapattom is inevitable. As we have shown above there is good authority in support of the proposition that subsequent events may be taken note of if they tend to reduce litigation'.

(11) The amendment was applied so late that a suit, if filed on the date of the amendment, would have been barred by limitation. The High Court took the view that the Subordinate Judge was incompetent to grant the leave to the amendment as the plaintiff had failed to aver in the application for amendment that the mistake in the description of the name of the plaintiff was bona fide. The High Court also held that the amendment allowed by the trial Court took effect only from the date of amendment and the action was barred by limitation. Allowing the appeal against the decision of the High Court, the Supreme Court speaking through Shah, J., observed at page 25 as follows:-

'the order passed by the High Court cannot be sustained. 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, inadvertence 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'.

(12) The suit was originally brought on the ground that non-delivery of the goods to the plaintiff by the defendant amounted to conversion. It was dismissed on the finding that the parties stood in the relationship of seller and purchaser and not agent and principal. In the appeal before the Supreme Court, the appellants applied for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. It was opposed on the ground that the amendment would introduce a new cause of action and a suit on that cause of action would now be barred by limitation and further that the plaintiffs had ample opportunity to amend the plaint but they were negligent in not doing so till at such a late stage. Nevertheless, the amendment was allowed by the Supreme Court with the following observations at page 450 :-

'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.'

(13) The amendment of the plaint was allowed by the High Court at the appellate stage. Upholding the amendment, the Supreme Court referred to their previous decision as below :-

'WE think that the correct principles were enunciated by Batchelor J. in his judgment in the same case. viz., *Kisandas Rupchand's case* (1900) I.L.R. 33 Born. 644(8), when he said at pages 649-650 : 'All amendment? 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..... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that 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. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defense to the claim. The ultimate test thereforee still remains the same : can the amendment be allowed without injustice to the other side, or can it not?'

(14) In the light of the above discussion it would appear that even the mandatory part of Order VI Rule 17 is what Lord Esher called, 'a rule of conduct' as contrasted with 'a rule of rigid law' while dealing with the corresponding English rule. The discretionary part of the rule operates entirely on considerations of justice as observed by the Supreme Court in *L. J. Leach and Company Limited v. Jardine Skinner and Company*, (supra). While commenting on the observations of BeamenJ. in *Kisandas Rupchand's case* (supra) purporting to lay down some conditions to be satisfied before an amendment could be allowed, the Supreme Court observed at page 603 as follows :-

'IT is not feasible nor advisable to encase a discretionary power within the strait jacket of an inflexible formula.'

(15) We are, thereforee, in respectful disagreement with the Division Bench in *Ram Gobinda's case* insofar as their Lordships purported to lay down an inflexible rule that a cause of action arising subsequent to the filing of the petition for eviction cannot be added in the petition by way of amendment.

(B)When amendment cannot or should not be allowed :-

(16) The Division Bench in Ram Gobind's case relied mainly on the decision in which the Judicial Committee of the Privy Council observed at page 250 as follows :-

'ALL rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but none the less no power has yet been given to 'enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.'

(17) The words used by the Judicial Committee were 'no power has yet been given (1) to enable one distinct cause of action to be substituted for another, (2) nor to change by means of amendment the subject-matter of the suit'. The point made by the Judicial Committee, therefore, was that the nature or the subject-matter of the suit cannot itself be wholly displaced or changed by the amendment. Their Lordships did not say that a distinct cause of action cannot be added to an existing cause of action. For, the additional cause of action may either support the existing one or it may take an alternative plea which may succeed even if the existing one fails. Under Order VI rule 7 Civil Procedure Code, no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. This means that a subsequent pleading cannot conflict with a previous pleading. But such an inconsistent plea can be taken in the alternative by way of an amendment. The addition of a new ground of attack or a cause of action to an existing one is not, therefore, forbidden. What would not be in the interest of justice is the substitution of one cause of action by another or changing the subject-matter of the suit itself. The two things are distinct and should not be confused with each other. Addition of a new ground of eviction to an existing one is not, therefore, prohibited by the ratio of the decision of the Judicial Committee of the Privy Council. On the contrary, Order VII rule 8 expressly enables the plaintiff to claim relief on distinct grounds. It only requires that they shall be stated separately and distinctly. There is, therefore, no bar to an amendment merely because it adds a new ground or a new cause of action or a new relief. The extensive case-law

under Order VI rule 17 has been studied and classified in Volume I of Mulla's Code of Civil Procedure, 13th Edition, and the result has been condensed into five classes of cases in which leave to amend would be refused at page 728 as follows :-

(1) Where the amendment is not necessary for the purpose of determining the real questions in controversy between the parties, as where it is-

(I) merely technical, or

(II) useless and of no substance.

(2) Where the plaintiff's suit would be wholly displaced by the proposed amendment.

(3) Where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time.

(4) Where the amendment would introduce a totally different, new and inconsistent case, and the application is made at a late stage of the proceedings.

(5) Where the application for amendment is not made in good faith.

It is to be noted that none of them says that amendment should be refused if it seeks to add a new cause of action which had arisen subsequent to the filing of the petition for eviction or of a suit. A successful objection to an amendment would be that it seeks to displace the suit wholly or that it introduces a totally different, new and inconsistent case or that it takes away a legal right from the defendant which has accrued to him by lapse of time if it cannot be compensated by costs. None of these objections bars an amendment introducing a new ground for eviction arisen after the filing of the petition for eviction.

(18) Some of the instances showing when the nature of a suit itself would be changed if an amendment is allowed are given in the following rules of Order II Civil Procedure Code as exceptions to the rule embodied in Order II rule 3. Order II rule 4 says that certain causes of action shall not be joined in a suit for recovery of immovable property except with the leave of the Court. Order II rule 5 prohibits the

joinder of a claim by or against an executor, administrator or heir as such with the claim by or against him personally save in the specified circumstances.

(C) Nature of the provisos to Section 14(1) of the Act:-

(19) Though there is no legal bar to the addition of a new cause of action to an existing one by an amendment, the addition of a new cause of action may sometimes be opposed on the ground that it changes the nature of the suit and is not, therefore, in the interest of justice. We may, therefore, examine whether the grounds for eviction enumerated in clauses (a) to (1) of the proviso to sub-section (1) of Section 14 of the Act can be called causes of action. The expression 'cause of action' has been used in several provisions of the Code of Civil Procedure such as Section 20(c), rules 2, 3 and 7 of Order II, rules I(e), 8, and 11 (a) of Order VII, etc. Simply stated, it is the cause or the reason or the ground or the facts which must be stated by the plaintiff to show to the Court that he is entitled to the relief claimed. If the cause of action does not speak for itself in the plaint, the plaint may be rejected under Order VII rule II(a) for want of a cause of action. The cause of action in a suit or the eviction of a tenant under the Transfer of Property Act would be the existence of the relationship of a landlord and a tenant which has been brought to an end by the termination of tenancy by a notice to quit, by efflux of time, by forfeiture, etc. But as observed by the Supreme Court in a series of decisions such as the rent control legislation is to be read as supplementary or an addition to the Transfer of Property Act and not as supplanting it or forming an independent code by itself. According to the ratio of therefore, the landlord filing a petition for eviction has a two-fold cause of action, namely, (a) termination of the contract of tenancy, and (b) deprivation of the statutory protection given to the tenant by the Delhi Rent Control Act by the arising of any of the circumstances enumerated in clauses (a) to (1) of the proviso to sub-section (1) of section 14. The burden of pleading and proving both parts of the cause of action are on the landlord had to consider the question whether the amendment of an eviction petition by the addition of a new ground for eviction would require the permission of the Court under sections 446 and 537 of the Companies Act, 1956. None of these provisions refer to the joinder of a new cause of action to the existing one by amendment. Nevertheless, by way of superabundant caution, the learned Judge

expressed the view at the end of paragraph 8 of his order that:-

'In a suit for eviction filed by a landlord against a tenant the right to sue and to get judgment arises from the determination of the tenancy..... Section 12 of the Bombay Rent Act provides that no ejectment shall ordinarily be made if tenant pays or is ready and willing to pay standard rent and permitted increases. It provides a protection for tenant against eviction after determination of tenancy. It creates an impediment in the way of the landlord recovering possession. Section 13 of the Bombay Rent Act provides certain conditions under which the protection, of the tenant is taken away and the impediment in the way of the landlord recovering possession is removed. These conditions are termed 'as grounds of ejectment'. It is not necessary for a landlord to set out these grounds in the notice to quit as they are not a part of the cause of action of the landlord. The landlord sets out these grounds in the plaint, not because they constitute his cause of action, but in anticipation of the tenant claiming the protection provided in Section 12, to show that conditions have arisen which have taken away the protection of the tenant and removed the impediment in the way of the 'landlord recovering possession. In my opinion, grounds of ejectment are not a part of the cause of action in such suit.'.

(20) Of course, it is not necessary to set out the grounds of ejectment in the notice to quit given by the landlord to the tenant for the simple reason that in the notice to quit the landlord has only to convey his intention to determine his contractual tenancy. Since the service of the notice to quit determines the tenancy and creates a cause of action for the suit, the question of setting out the cause of action itself in the notice to quit cannot arise. It would be putting the cart before the horse. But the cause of action has to be stated in the petition for eviction. Under section 56(2)(a) of the Act, the Central Government has made Rules, inter alia, prescribing the form and manner in which an application may be made to the Controller. The prescribed form for application for the eviction of a tenant requires the statement by the landlord not only of the termination of the tenancy but of the specific ground or grounds on which the recovery of possession of the premises is sought. The proviso to section 14(1) also states that 'the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of

possession of the premises on one or more of the following grounds'. If, therefore, the landlord were to simply state in such an application that the contractual tenancy has been terminated but would not state whether any of the grounds for the recovery of possession is available to him, the statement of his cause of action would be incomplete. The Controller would not be able to entertain the application as he would not know on which ground the recovery of possession is sought from the tenant. To the pleading that the contractual tenancy is terminated, the Controller would reply that is only a part of the cause of action and the statement of such a part is not sufficient to disclose the full cause of action, nor is it possible for the landlord to argue that it is for the tenant first to state that none the grounds for the recovery of possession is available to the landlord- The tenant can simply ask for the rejection of the application for eviction on the ground that it does not disclose complete cause of action unless and until the landlord pleads the ground or grounds for recovery of possession. The burden of pleading and proving the termination of the tenancy as well as the ground for the recovery of possession is placed on the landlord by the principal part of as well as by the proviso to section 14(1) of the Act. With respect, therefore, we are unable to agree fully with the statement of law made in the Bombay decision referred to above.

(21) Reference was also made by the learned counsel for the petitioner to the Supreme Court decision. The question before the Supreme Court was whether in a petition for eviction filed by the landlord seeking the possession of the premises from the tenant on the ground of personal requirement, the right to sue survives to the legal representatives of the tenant. It was held that the requirements of the legal representatives would be different from the requirements of the landlord and, therefore, the right to sue does not survive to the legal representatives. In paragraph 12, the following distinction was made :-

'If the appellants were permitted to continue the proceedings, then it will assume a complexion wholly beyond the compass of the original cause of action. Indeed, it is difficult to see how, without a fundamental alteration of the pleadings, appellant could continue the proceedings. Such an alteration will fall beyond the scope of amendment of pleadings, permissible under a most liberal interpretation of Order

Vi rule 17 Code of Civil Procedure The appellants emergence in the proceedings will require the' determination of wholly different and distinct issues. Their requirements, not that of the plaintiff, and the availability to them, not to the plaintiff, of other reasonably suitable residential accommodation will now form the centre of conflict.'

(22) Briefly, therefore, the amendment of the petition for eviction by substituting therein the requirements of the legal representatives in place of the requirements of the deceased landlord would wholly change the nature of the petition and would displace it altogether. This, as we have already seen above, is not permissible under Order Vi rule 17 Civil Procedure Code. This observation is, therefore, in line with* the heading (B) of our discussion and the decisions referred to there under and does not in any way help the petitioner.

(23) It was held by a Full Bench that notwithstanding the pendency of an application for eviction filed by a landlord against In's tenant, the landlord is entitled to file a second application for eviction either during the pendency of the first application or after its disposal, relying upon a ground of eviction which has accrued to him during the pendency of the earlier application. In paragraph 9 of the decision, the Full Bench has regarded a ground for eviction as giving a right to the landlord to evict the tenant and, therefore, each such ground as constituting separate cause of action for eviction. We have already expressed our view that the cause of action for eviction is a combination of the termination of the contractual tenancy and the existence of a circumstance depriving the tenant of the statutory protection given by he rent control legislation. But it is relevant to observe that on the arising of a part of the cause of action consisting of the termination of the contractual tenancy, the landlord can file an eviction petition on the grounds for recovery of possession which exist at the time of the filing of the petition inasmuch as they complete the cause of action when combined with the termination of the contractual tenancy. If, however, a new ground for the recovery of possession arises after the filling of the petition, then that also can be combined with the termination of the contractual tenancy to form a new cause of action. A landlord would be able to file a new eviction petition on the strength of such a new cause of action arisen subsequent to the filing of the previous eviction petition. On the one

hand, he may apply for the amendment of the existing eviction petition and urge this ground also to enlarge the existing cause of action. On the other hand, he would be entitled to file a fresh petition by combining the new ground with the existing part of the cause of action consisting of the termination of the contractual tenancy. In practice, the landlord would be well advised in amending the petition for eviction rather than filing a separate one. For, pursuing two different petitions for eviction on two different grounds through the vicissitudes of litigation would lead to uncertainty and possibility of injustice. For instance, the subsequently filed petition may be stayed on the principle embodied in section 10 Civil Procedure Code termination of tenancy being in issue in both. The landlord would be deprived of the opportunity of proving his case in the subsequent petition till the previous petition is finally decided. This will result in delaying of the trial of the subsequent petition. Memories fade. Evidence tends to disappear Multiplicity of proceedings ensues and the final result is delayed which itself leads to injustice. All these evils can be avoided if the subsequently arising ground is allowed to be added to and tried with the pre-existing grounds in the existing petition for eviction. This is an additional reason why the amendment in such a case should be allowed.

(24) In the light of the above discussion, we answer the question referred to us in the affirmative and hold that the Controller has the power and jurisdiction to allow an amendment to add a now ground of eviction which has arisen subsequent to the filing of the eviction petition and which is different from the ground on which the eviction petition had been filed. The Civil Miscellaneous (Main) Petition will now go back to the learned Single Judge for disposal in accordance with the opinion expressed by us on the reference-

(25) WE make no order as to costs of this reference.