

Reliable Testing Laboratory P. Ltd. and Another Vs. Smt. Gurcharan Kaur

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Court : Delhi

Decided On : Sep-08-1999

Reported in : 1999VIAD(Delhi)384

Judge : M.K. Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revision No. 614/1997

Appellant : Reliable Testing Laboratory P. Ltd. and Another

Respondent : Smt. Gurcharan Kaur

Advocate for Def. : Mr. M.L. Lonial, Adv.

Advocate for Pet/Ap. : Mr. P.K. Rawal and; Mr. Kuljeet Rawal, Advs

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. In the suit instituted by the respondent as plaintiff seeking for a decree for recovery of possession of the suit premises by evicting the defendant there from and also for recovery of Rs. 27,000/- as arrears of rent and pendente lite and future interest the defendants filed their written statement. On the basis of the

pleadings of the parties issues were framed and the suit was set down for recording evidence. The plaintiff examined P.W. 1 and his examination-in-chief was recorded. At that stage the defendants filed an application under Order 6, Rule 17 of the Code of Civil Procedure seeking for amendment of the written statement by incorporating few paragraphs in the said written statement. It was stated in the said application by the defendants that subsequent events after the filing of the written statement could not be placed on record by the defendants and that the said events are necessary to be incorporated to determine the controversy between the parties. The aforesaid application was opposed by the respondent/plaintiff and the parties were heard on the said application by the Civil Judge, Delhi. By order dated 22.2.1997 the aforesaid application was dismissed holding that the paragraphs sought to be incorporated by the defendants by way of further objections are not required to be incorporated in the written statement and that they have no direct bearing on the merit of the suit. Being aggrieved by the aforesaid order the present petition has been preferred by the defendant.

2. Learned counsel appearing for the petitioner submitted that the amendments sought for by the petitioner in the written statement are necessary and vital to determine the real controversy between the parties and as they relate to subsequent events after the filing of written statement the same should have been allowed to be incorporated in the written statement. He also submitted that even if the said amendments are allowed the same would not change the nature of the defense in any manner and therefore, the impugned order is liable to be set aside.

3. Learned counsel appearing for the respondent however, submitted that none of the aforesaid averments sought to be incorporated in the written statement could be said to be subsequent events. It was also submitted that there is admission in the written statement and if the amendments are allowed the same would amount to allowing the defendants to withdraw the admissions. It was submitted that most of the averments sought to be incorporated are reiteration of the facts already existing in the written statement and some of such averments are in the nature of evidence and accordingly, the trial court was justified in rejecting the application.

4. In the light of the aforesaid submissions of the learned counsel appearing for the parties I have carefully considered the contents of the application under Order 6, Rule 17 of the Code of Civil Procedure. The defendants seek to introduce 18 paragraphs in the written statement by way of preliminary objections. Each of the aforesaid objections has been considered by me and I propose to deal with them one by one.

5. The defendants desire to incorporate the contents of preliminary objection No. 6 in the written statement. In the said objection the defendants seek to raise a legal issue to the effect that the Delhi Rent Control (Amendment) Act, 1998 is unconstitutional. It is not understood how the said issue could be said to be a subsequent event after the filing of the written statement. In any case the aforesaid legal issue sought to be raised has since been settled by the Supreme Court in the case of D.C. Bhatia & Others v. Union of India: reported in (56) 1994 DLT 324 wherein the Supreme Court has held that the said amendment Act is legal, valid and constitutional. So the aforesaid preliminary objection cannot be allowed to be incorporated as the issue is settled.

6. The petitioners sought for incorporation of preliminary objection No. 7. In the said paragraph the defendants have given past history as to how the tenancy came to be created, and the manner in which the petitioners/defendants were inducted into the suit premises and that rent was paid up to 31.3.1992. The aforesaid events could not be said to be events subsequent to the filing of the written statement and were in existence even at the time when the written statement was filed. Besides, similar contentions have already been made by the defendants in the preliminary objection No. 1 of the written statement. Most of the averments made in the said preliminary objection No. 7 appear to be in the nature of evidence which the defendants would be able to lead at the time of trial and it is not considered necessary to incorporate the same in the written statement at this stage when examination-in-chief of PW. 1 has been completed.

7. So far preliminary objection No. 8 is concerned on perusal of the written statement filed by the defendants I find that they have pleaded therein that the petitioner No. 1 is a tenant in respect of 735 Sq. Ft. on the ground floor, 1435 Sq.

Ft. on the mezzanine floor, 300 Sq. Ft. on the first floor @ Rs. 32,500/- per months. In view of the aforesaid statements in the written statement which are in the nature of admission, the petitioners cannot claim tenancy rights over the open portions also, for they cannot be permitted to enlarge the area of tenancy premises by way of amendments in the written statement.

8. The petitioners also desire to introduce preliminary objection No. 9 contending inter alias that they have been enjoying the suit property Along with the open portion since 1980 and also have been paying electricity charges for the entire premises Along with the rent for the premises and thereforee, they are entitled to adjustment in respect of the amount paid by them. A reading of the written statement already on record would indicate that they admitted that they are tenants in respect of particular area on the ground floor, mezzanine floor and first floor and thereforee, they cannot claim any open area as part of the tenancy premises nor could they plead any dispossession by the respondent. In the aforesaid objection No. 9 the petitioners seek to plead that the respondent has constructed a factory in a part of the suit premises and is using electricity from the electricity connection. The said statement cannot be said to subsequent event and should have found mention in the written statement itself. The aforesaid plea appears to be an after-thought. The said plea is also not available to the petitioners as no plea of set off or counter claim has been pleaded in the written statement.

9. By way of amendment and incorporation of objection No. 10 the petitioners are trying to introduce pleas regarding blockage of sewer and cost of white washing etc. The aforesaid plea is a new plea being taken for the first time and a fresh claim is sought to put up by making the aforesaid statement, Even otherwise plea of blockage of sewer and cost of white washing is not relevant or necessary for deciding the suit for possession and so far the issue of adjustment is concerned the same cannot be done in the manner sought to be done by the petitioners, as no counter claim is made by the petitioners within the period of limitation.

10. Under preliminary objection No. 11 a plea is sought to be taken and added that two bath rooms which were in possession of the defendants and sister concern of

the defendants No. 1. have been forcibly taken away by the plaintiff and locked and that the defendants have been deprived from using the same. Additional District Judge has considered the aforesaid plea and has held that the controversy could be adjudicated upon in the light of the agreement between the parties and that the amendment is unnecessary addition to the pleadings. I find no merit in the aforesaid conclusions and hold that such amendment is also not necessary to be incorporated in the written statement.

11. I have also considered the objections Nos. 12, 13, and 14 as sought to be incorporated by way of preliminary objections. In my considered opinion the same are reiteration of what already exists in the written statement and need not be included in the written statement.

12. Similar contention is also sought to be added to by adding objection No. 15 contending inter alias that the plaintiff intentionally removed the water tanks to harass the defendants so as to compel the defendants to close their business. Objections No. 16, and 17 are objections with regard to raising construction and snatching portions under tenancy of the defendants and thereafter lowering the reputation of the defendants. The aforesaid contentions, in my considered opinion, are not necessary for deciding the issue in controversy between the parties.

13. Considering the nature of averments sought to be incorporated through Objection No. 18 I do not find any relevance of the said paragraphs to the issue involved in the present suit.

14. The trial court has considered the nature of amendment sought to be incorporated in the written statement and on consideration thereof has come to the definite conclusion that the said objections are not necessary to be incorporated in the written statement nor do they have any direct bearing on the merits of the suit. In the light of the aforesaid discussion I do not find any error committed by the trial court in arriving at the aforesaid conclusion. I find no infirmity in the judgment/order passed by the trial court, the petition stands dismissed.