

**Misha Vadera Vs. Ravi Kumar**

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**Court :** Delhi

**Decided On :** Feb-29-1996

**Reported in :** 1996IIAD(Delhi)113; 2003(39)DRJ7

**Judge :** R.C. Lahoti and; Lokeshwar Prasad, JJ.

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

**Appeal No. :** First Appeal No. 40 of 1996

**Appellant :** Misha Vadera

**Respondent :** Ravi Kumar

**Advocate for Pet/Ap. :** H.L. Tikku,; A.K. Wali,; Geeta Mittal and;

**Judgement :**

**R.C. Lahoti, J.**

(1) This is an appeal under Section 10 of the Delhi High Court Act, 1966 preferred by the plaintiffs feeling aggrieved by order dated 9.11.95 passed by a learned Single Judge of this Court sitting on the original side whereby an application under Order 6 Rule 17 Civil Procedure Code filed by the defendants seeking amendment in the written statement has been allowed.

(2) The suit property consists of a flat measuring 1106 Sq.ft. on the first floor of a multi-storeyed building known as 'Hansalya' situated at 15, Barakhamba Road, New Delhi. Mr. Misha Vadera, the plaintiff No. 1 is Managing Director of Hotel Hans Pvt. Ltd., the plaintiff No.2. The defendant No. 1 is admittedly the owner of the suit property. The defendant No.2 is a real estate agent. The defendant No.3 is builder of the multi-storeyed building of which the suit property forms a part.

(3) According to the plaintiffs, the defendant No. 1 entered into an agreement to sell the suit property in favor of the plaintiffs on 28.10.93. There is no agreement in writing. However, the agreement is sought to be spelled out from the contents of a receipt dated 28.10.93 which is reproduced hereunder as the contents would be of some relevance at a later stage of this order :-

'RECEIPT Received the sum of Rs.1,00,000.00 (Rupees One Lac only) in Cash from Mr.MISHA Vadehra, Hansalaya, 15, Barakhamba Road, New DELHI-1100001 as an advance and part payment towards the sale proceeds of Flat NO.\_\_\_\_\_ measuring 1106 sq.ft. on the First Floor, Hansalaya, 15, Barakhamba Road, New DELHI-110001. The total sale consideration has been settled for Rs.90,00,000.00 (Rupees Ninety Lacs only). Further advance of Rs.8,00,000.00 (Rupees Eight lacs only) will be paid within seven days from the signing of this Receipt. That the Seller shall apply for the clearance from Competent Authority within 10 days from the Date of the signing of this RECEIPT. After getting the clearance, the Seller shall inform the Purchaser by Registered Post, to get the said flat transferred in his favor or in the name of his nominee within 60 days from the date of receiving the information after paying the balance consideration of Rs.81,00,000.00 (Rupees Eighty Lacs only). The Seller undertakes to clear all dues of House Tax up to date of transfer of the said property. This Bargain has been finalised by Satish Pandit & ASSOCIATES. They will be paid 2% of the total sale consideration by the Seller and Purchaser respectively as their COMMISSION. Date : October 28, 1993. Ravi KUMAR

(4) On 16.12.93, the plaintiffs filed the present suit alleging breach of agreement on the part of the defendants. Written statement by defendant No.1 came to be filed on 22.9.94. In between two interlocutory applications filed by the plaintiffs

were disposed of. They were respectively under Order 39 Rules 1 & 2 Civil Procedure Code and under Order 40 Rule 1 CPC. Orders on both the applications have been subject matter of appeals preferred by the defendant No.1. The appeals have been disposed of. An interim injunction restraining the defendant NO.1 from alienating and parting with possession over the suit property was granted conditional upon the plaintiffs depositing the balance amount of consideration of Rs.89 lacs in the Court. The plaintiffs had succeeded in securing an ex-parte order appointing the plaintiff No.1 as receiver over the property which was set aside in appeal filed by the defendant No.1. The plaintiff No.1 who had succeeded in securing possession over the suit property was directed to restore possession back to the defendant No.1 by order in appeal.

(5) On 2.1.95 i.e. a little more than a three months after the date of filing of the written statement by defendant No.1, the application seeking amendment in the written statement came to be filed which has been allowed by the learned Single Judge and is the subject matter of this' appeal.

(6) The application for amendment is little longish one and it would suffice for the purpose of this appeal to set out the gist thereof, so as to appreciate the nature of the amendments which are sought for in the written statement. The pleas sought to be introduced by way of amendment are in substance as under :-

(I) a legal plea that the receipt dated 28.10.93 does not constitute an agreement for transfer of immovable property; the receipt being un-registered and unstamped is not admissible in evidence;

(II) time was of the essence of the contract; with the plaintiff having committed default in performing his. obligations within the time agreed upon between the parties, he must be held liable for the breach disentitling him from seeking specific performance;

(III) the contract with the plaintiff was accompanied by a back to back agreement by the defendant No.1 whereby the defendant No.1 had agreed to purchase some other property relying upon the contract with the plaintiff.

The details of such back to back agreement and the consequences flowing thereon as a result of the breach committed by the plaintiff No. 1 are set out in very many details;

(IV) Plaintiff No.2 is not a party to the contract; it does not have any right to sue; so also the defendants No.2 and 3 have been unnecessarily joined as parties to the suit.

(7) Though the prayer for amendment was vehemently opposed on behalf of the plaintiffs, the same has been allowed by the learned Single Judge as already noticed.

(8) Learned counsel for the plaintiff/appellants has made the following submissions which were made before the learned Single Judge also :-

(I) that the defendant No.1 proposes to withdraw an admission made by him earlier which cannot be permitted to be done by way of an amendment in the written statement;

(II) that the defendant No.1 proposes to introduce a new case in the written statement and no reason has been assigned why the facts which are now sought to be pleaded could not have been pleaded in the written statement as originally filed.

(9) It is pertinent to note that the suit is still at its preliminary stage. The pleadings are yet to be completed. Issues are yet to be framed.

(10) Approach to be adopted by the Courts while dealing with an application for amendment of pleadings is well settled by a catena of decisions from the Supreme Court laying down law on the point. Order VI Rule 17 Civil Procedure Code itself provides 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 question in controversy between the parties.

(11) In Pirgonda Hangonda Patil VS . Kalgonda Shidgonda Patil & Ors. : [1957]1SCR595 their Lordships have held :-

'ALL amendments ought to be allowed which satisfy the two condition (a) 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. 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?'

(12) In Jai Ram Manohar Lal VS . National Building Material Supply, Gurgaon : [1970]1SCR22 their Lordships have 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, 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.' 'There is no rule that unless in an application for amendment of the plaint it is expressly averred that the error, omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. 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.'

(13) In Haridas Aildas Thadani & Ors. VS . Godrej Rustom Kermani : AIR 1983 SC319 reiterating the principles laid down in Pirgonda Hongonda Patil's case (supra), their Lordships have held :-

'THE Court should be extremely liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side. A revisional Court also ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.'

(14) In Pandit Ishwardas vs . The State of Madhya Pradesh & Ors. , their Lordships have held that delay by itself cannot be a ground for refusing an application for amendment and an amendment may be allowed even at a belated stage like in an appeal.

(15) There is no absolute bar against an amendment seeking to withdraw even an admission. An amendment of such a nature if sought for would raise a question touching the discretion of the Court but not its jurisdiction. 15.1 In M/s.Modi Spinning & Weaving Mills Co. Ltd. & Anr. VS . M/s.Ladha Ram & Co. : [1977]1SCR728 an application for amendment in the written statement was moved three years after the filing thereof. Two paragraphs were sought to be deleted while two new paragraphs were sought to be added. The effect of permitting such an amendment would have been 'the repudiation of the clear admission' which was 'motivated to deprive the plaintiff of the valuable rights accrued to him'. For this reason, the trial Court rejecting the application for amendment had formed an opinion that the proposed amendment was against law and the application for amendment was not bonafide. The High Court on revision affirmed the order of the trial court and observed that by means of amendment the defendants wanted 'to introduce an entirely different case' and if such amendments were permitted it would prejudice the other side. Their Lordships of the Supreme Court maintained the orders of the two courts below and opined - 'the defendants cannot be allowed to change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case.' 15.2 In Panchdeo Narain Srivastava VS . Km. Jyoti Sahay & Anr. : AIR 1983 SC462 , their Lordships have while referring to Ganesh Trading Company's case (supra) laid down the law

in the following terms :-

'AN admission made by a party may be withdrawn or may be explained away. thereforee, it cannot be said that by amendment an admission of fact cannot be withdrawn.' 'Trial Judge, granting the application for amendment was satisfied that in order to effectively adjudicate upon the dispute between the parties, amendment of the pleading was necessary, and, thereforee, the High Court ought not to have interfered in its revisional jurisdiction.'

15.3. Very recently in *Akshaya Restaurant VS. P.Anjanappa & Anr.*, 1995 (2) Scale 149 in a suit for perpetual injunction based on an agreement to sell entered into by the defendant in favor of the plaintiff the defendant in his written statement admitted the factum of the agreement to sell having been entered into. Subsequently an application for amendment was moved seeking to delete the above said admission and proposing to plead that there was no agreement entered into between the parties as alleged by the plaintiff. The amendment though rejected by the Trial Court was allowed by the High Court. In an appeal preferred by the plaintiff before the Supreme Court, it was contended that having made an admission that the respondents had entered into an agreement to sell and having made certain averments in support thereof it was not open to the respondent to wriggle out from admission. It was further contended that admission was a material piece of evidence which would be in favor of the appellant and binds the respondents; when the admission is sought to be withdrawn and some additional facts are sought to be introduced, it would be inconsistent and the High Court was not justified, in permitting such an amendment. Their Lordships found 'no force in the contention' and held :-

'IT is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 Civil Procedure Code in permitting amendment of the written statement.

(16) The law is thus clear and well settled. We may now proceed to examine the facts of the case in the light of the law as above said. 16.1 Firstly, as a matter of fact we do not find the defendant No.1 resiling from his previous stand in the sense of taking a complete somersault on the stand taken by him earlier. The defendant is raising additional pleas. No part of the written statement as originally filed is sought to be deleted or dropped. Thus the plaintiff/appellant is wholly unjustified in submitting that the application for amendment proposes to withdraw an admission earlier made by the defendant No.1. The learned counsel for the plaintiff-appellant has not been able to point out any so-called-admission in the written statement which is sought to be withdrawn or thrown over-board by the defendant No.1. What was referred to by the learned counsel for the plaintiff/appellant were certain statements made in the memos of appeal filed by the defendant No.1 challenging the orders of injunction and appointment of receiver. There the defendant No.1 has stated that agreement to sell the property was entered into in favor of the 'plaintiffs' or 'plaintiffs No.1 and 2'. These statements would remain on record for whatever worth they are. The defendant No.1 is not withdrawing these alleged admissions. The memos of appeal are pieces of evidence and can very well be used by the plaintiffs at the stage of evidence for whatever evidential value they may possess. We find that the plea sought to be introduced by the defendant No.1 is in consistent with the contents of the receipt dated 28.10.93 which has been reproduced in para 3 of this order. No exception can be taken to the amendment sought for on this count. 16.2 It is true that some new pleas are sought to be introduced by way of amendment. That will mostly be so while seeking an amendment in the pleadings. Mostly an amendment would either be an enlargement of the pleas already taken or an introduction of new pleas. Otherwise where would be an occasion for moving an application for amendment? However, the fact remains that the pleas which are sought to be introduced by the defendant No.1 are in no way inconsistent with the pleas already taken in the written statement. The pleas that the receipt dated 28.10.93 suffers from lacunas looked at in the light of the provisions of the Stamp Act and Registration Act, and that the plaintiff No.2 and the defendants No.2 and 3 are unnecessary parties, are pleas basically legal in nature and there is no reason why the defendant No.1 should be debarred from raising these pleas even if they were

not taken earlier. 16.3 Reference may be had to the provisions contained in Sections 17,21,31 and 115 to 117 .of the Evidence Act. The scheme of the law is that admissions are not conclusive proof of the matters contained therein. They may be shown to be untrue, or to have been made under a mistake of law or fact, or to have been uttered in ignorance, levity or an abnormal condition of mind. The weight of the admission would depend on the circumstances in which it was made. It can be withdrawn unless it may amount to an estoppel and become conclusive. In *Nagubai Ammal & Ors. VS . B. Shama Rao & Ors. : [1956]1SCR451* , the law has been so stated :-

'AN admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.'

In our opinion there is no reason to apply a different yardstick of law to an admission contained in pleadings.

(17) A prayer for amendment in the written statement is to be dealt with more liberally than a prayer for amendment in the plaint. An effort at pleading an alternate inconsistent case in the plaint may be suicidal to the plaintiff and hence may not be permitted but the defendant may in his written statement take the alternate pleas even if they may be inconsistent to some extent and in appropriate cases.

(18) The learned counsel for the defendant No.1 during the course of hearing pointed out the events in their chronological order in support of her submission that the defendant No.1 is a non-resident Indian who had come to India for negotiating and expeditiously finalising the two deals - back to back deals as pleaded by him - but he found himself involved in vicious litigation initiated by an unwilling purchaser - the plaintiff No.1, who moved applications after applications seeking interim orders from the trial court so as to build an undue pressure on him and make him surrender to his dictates. The plaintiff No.1 would have almost succeeded in his design if only the appellate court would not have come to the

rescue of the defendant No.1 allowing just reliefs to him on at least two occasions.

18.1 Caught in the cobweb of litigation, the defendant No.1 had filed his written statement hurriedly and he could give the written statement its proper shape only when he had a little respite for collecting himself and giving a cool headed thought to his case. It is pointed out that some documents were lying in his locker and when brought out, provided material for introduction of certain pleas. As already noticed the amendment has been moved at a very early stage. The defendant No.1 cannot be charged with culpable delay or malafides in seeking amendment. The amendment permitted proposes to raise such relevant and necessary pleas as would bring out the matters in controversy and enable a just decision of the case. No. injustice is worked out to plaintiffs. They have full opportunity of meeting out the case set up by defendant including one set up by amendment. There is no plea barred by limitation and introduced by amendment. The trial court has allowed the amendment subject to payment of Rs.7,000.00 by way of costs saddled on defendant No.1 which amply takes care of the inconvenience if any caused to the plaintiff. Liberty has been allowed to the plaintiffs to raise additional pleas by way of consequential amendments to the pleas now allowed to be raised by defendant No.1 in his written statement. In our opinion the approach adopted by the trial court is perfectly legal, just and fair and takes care of the interests of both the parties. No fault can be found with the impugned order.

(19) Before parting we may note that placing reliance on a recent Division Bench decision of this Court in Abdul Hamid VS . Charanjit Mehra : 60(1995)DLT847 , the learned counsel for the respondent No.1 had raised a preliminary objection to the maintainability of the appeal submitting that the impugned order did not amount to 'judgment' within the meaning of Section 10(1) of Delhi High Court Act, 1966. In Abdul Hamid's case (supra) a learned Single Judge of this Court sitting on the Original Side had allowed an amendment in the plaint against which an intra-court appeal was filed. Having reviewed the case law available on the point, the learned Chief Justice speaking for the Division Bench has held that whether it be a case of amendment of plaint or of written statement if the amendment allowed 'permits introduction of a new case' and 'affects valuable rights accrued' to the opposite party on the date of the suit, then the order permitting amendment would amount to a 'judgment'. In the appeal at hand, the learned counsel for the parties have

been heard on merits, at length and fully, so as to find out also if any valuable right accrued to the plaintiff on the date of the suit was taken away by permitting amendment in the written statement. We are satisfied that no such right of the plaintiff has been taken away. The appeal would, therefore, not lie.

(20) In any case the appeal is wholly devoid of any merit and is held liable to be dismissed.

(21) For the foregoing reasons, the appeal is dismissed with costs quantified at Rs.2,000.00 .

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