

Parduman Singh Vs. Y.D. Sharma

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Court : Delhi

Decided On : Jan-28-1991

Reported in : 43(1991)DLT574

Judge : P.N. Nag, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 5, Rule 17

Appeal No. : Civil Revision Appeal No. 16 of 1991

Appellant : Parduman Singh

Respondent : Y.D. Sharma

Advocate for Pet/Ap. : K.K. Buchar and; V.P. Sharma, Advs

Judgement :

P.N. Nag, J.

(1) This civil revision petition is directed against the impugned order dated 5th December, 1990 passed by Shri R.S. Mahla Sub Judge, Delhi dismissing the two applications under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code, 1908 For amendment. The first application was moved for amendment in the written statement while the second application was moved for amendment in the amendment application.

(2) The brief facts giving rise to this revision petition are that the respondent-plaintiff had filed a suit alleging himself to be the owner of a plot of land bearing No. HS-17, Kailash Colony Market, Kailash Colony, New Delhi and that the petitioner-defendant of his own showing was a tenant of the suit land. The respondent-plaintiff had terminated the tenancy vide notice dated 26th July, 1980 and thereafter the suit for possession had been filed. In the written statement filed on behalf of the petitioner-defendant, the stand taken was that the relationship of landlord and tenant existed between the parties and the case is governed by the Delhi Rent Control Act, 1957. The suit is at the stage of plaintiff's evidence. After the plaintiff was partly cross-examined, it appears that the petitioner-defendant filed an application under Order 6 Rule 17 of the Civil Procedure Code, 1908 in which he wanted to add Preliminary Objection No. 4 and also wanted an amendment in paragraph 6 on merits and the substance of the amendment which he sought to incorporate was that the plaintiff allowed the defendant, at the time of letting out of the premises in question, to raise construction on the unconstructed portion of the plot of land in question. Such construction was to be in addition to the construction which the plaintiff had let out to the defendant at the time of creation of the tenancy. It is submitted that such construction, along with the remaining unconstructed portion of the plot of land was to be used for manufacturing purposes. This amendment sought by the petitioner-defendant has been disallowed on the ground that the applications are mala fide and intended to delay the proceedings and in fact is an abuse of process of law and consequently the pleas which are now sought to be incorporated in the written statement are inconsistent pleas wholly suicidal to the original pleas taken by the petitioner-defendant in the written statement.

(3) Learned counsel for the respondent-plaintiff has vehemently contested the revision petition and raised substantially the same pleas which were raised before the Sub Judge.

(4) I have carefully considered the matter but regret I am unable to accept the contention of the learned counsel for the respondent. The amendment which is sought to be incorporated now in the written statement aforementioned no doubt is an additional plea/relief but this is in no way inconsistent with the case set up

earlier. The amendment sought to be incorporated is in fact an additional relief and is in no way destructive to the stand earlier taken by the respondent-plaintiff.

(5) The next question that arises for consideration is whether these applications are moved malafide and with a view to delay the proceedings in the suit before the trial court. I am unable to agree with the trial judge with regard to this finding as well mainly because the applications have been filed at the stage when the plaintiff was partly cross-examined and it does not give an inference that the applications are moved malafide and intended to prolong and delay the proceedings. Even otherwise the amendment sought to be incorporated is an additional plea and is not suicidal to the stand already taken and such a plea could have been taken by him at any stage of the proceedings under Order 6 Rule 17 of the Civil Procedure Code 1908. The Court can allow amendment at any stage of 'the proceedings in order to determine the point in controversy between the parties. There is no limitation for making an application for amendment. therefore, this contention of the learned counsel for the respondent also fails.

(6) In my opinion, the amendment sought for is necessary to determine the point in controversy between the parties and, therefore, the amendment sought for has to be allowed. However, in order to compensate the respondent- plaintiff, the petitioner-defendant will pay a sum of Rs 100.00 as costs.

(7) The impugned order is set aside and the revision petition is allowed The amended written statement be filed by the petitioner-defendant within on week from today in the trial court.

(8) Since the suit has already been considerably delayed, it will be appreciated if the trial court expedites the hearing of the matter and counsel for the petitioner-defendant undertakes to this court that he will cooperate in the expeditious disposal of the matter.

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