

Ramchandra Vs. Mahendar Singh

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Court : Rajasthan

Decided On : Jan-20-1978

Reported in : 1978(11)WLN365

Judge : S.K.M. Lodha, J.

Appeal No. : S.B. Civil Revision No. 92 and 93 of 1978

Appellant : Ramchandra

Respondent : Mahendar Singh

Advocate for Def. : Mr. A.L. Chopra

Advocate for Pet/Ap. : Mr. G.R. Singavi

Disposition : Application allowed

Judgement :

S.K.M. Lodha, J.

1. These are two revision petitions by the defendant directed against the order of the Munsif City Jodhpur dated 20-1-1978 by which he has ordered that the pleas taken in paras Nos. 2 and 3 of the additional written statement put in by the defendant in answer to the amended plaint be ignored. The question involved in both the revisions is common. I, therefore, propose to decide them by a common

judgment.

2. I may state the facts leading to S.B. Civil Revision Petition No. 92 of 1978. The plaintiff non-petitioner instituted a suit for arrears of rent and ejectment against the defendant-petitioner in the court of the Munsif City, Jodhpur, on May 18, 1976. It was stated in para 8 of the plaint that the defendant petitioner had paid rent upto Posh Sudi Poonam, Samvat 2024. The suit was brought for the recovery of the rent and damages for use and occupation in respect of 36 months. It was also stated that if the defendant petitioner wants to take benefit of the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (No. XVII of 1950), he should deposit the entire rent. The defendant petitioner contested the suit on various grounds vide written statement submitted on October 7, 1976. Issues were framed by the trial court on March 2, 1977 and the case was posted for evidence on issue No. 1. On May 23, 1977, an application was moved under Order VI, Rule 17, CPC praying (herein that the plaintiff may be permitted to amend the plaint by adding the following to para 8 of the original plaint.-

izfroknh us laor~ 2024 es ek?k onh ,de ds ckn tks fdjk;k M;w ggvk og oknh dks vFkok oknh ds dqnjrh firk Jh gfjfd'ku m QZ gfjflag dks u rks /kkek u VsUMj fd;k o bl izdkj N% ekg ls vf/kd le; dk fdjk;k vnk ugh djus ls fMQkYVj g SA

3. The defendant petitioner contested this application by filing a reply dated September 7, 1977. The trial court vide its order dated September 7, 1977, allowed the amendment. The operative portion of the order dated September 7, 1977 runs as under:

vr% vkns'k gS fd oknh dk izkFkZuki= 15@& gtZ us ij Lohdkj fd;k A tkrk gS rFkk izkFkZuki= la'kks/ku dh vuqefr nh tkrh gS AgqDe lquk;k A

September 21,-1977 was fixed for the presentation of the amended plaint by the trial court. On September 21, 1977 the plaintiff non-petitioner filed the amended plaint and the copy of it was delivered to the defendant's counsel. It was specifically mentioned in the order-sheet dated September 21, 1977:

odqyk; gkftj A

odhy oknh us la'kksf/kr okn is'k fd;k A udy odhy izfroknh dks nh xbZ A i=koyh okLrs tckcnkok dk fnukad 17&10&77 dks is'k gks A

On November 1, 1977, additional written-statement was submitted. An objection was taken before the trial court on 1-12-1977 that in the additional written statement which has been submitted in reply to the amended plaint certain additional pleas have been taken which could not be taken. The trial court heard arguments on this objection and passed the order under revision on, January 20, 1978 as aforesaid.

4. In S.B, Civil Revision Petition No. 93 of 1978, the order has also been made under the circumstances narrated above.

5. Aggrieved by the orders dated January 20, 1978, the defendant-petitioner has come up in revision before me.

6. I have heard Mr. A.L. Chopra learned Counsel for the defendant-petitioner and Mr. G.R. Singavi learned Counsel for plaintiff-non petitioner and also perused the record of the case.

7. The first contention raised by Mr. Chopra is that when the plaint has been amended in pursuance of the order of the trial court, the defendant has an unqualified right to file fresh written-statement untrammelled by the pleas which he has taken in the earlier written-statement. The whole of the written-statement should be allowed to be taken on record and the learned Munsif has exercised his jurisdiction illegally & with material irregularity in directing that paras Nos. 2 and 3 of the additional written statement should be ignored. It was further submitted that the order allowing the amendment dated September 7, 1977 does not restrict his right to file written statement of amended portion of the plaint alone. In support of his contentions Mr. Ghoprahas placed reliance on GirdhariLal v. Krishan Datt , New Bank of India Ltd v. Shit Raj Rani and an unreported decision of this Court in SB Civil' Revision No. 10 of 1975; Ram Das and Ors. v. Harinarain decided on August 18, 1970', On the other hand, learned Counsel for the plaintiff-non-petitioner argued that a perusal of the order sheet dated September 2, 1977 shows that the defendant-petitioner was required to file written-statement to the

amended plaint alone and it is not open to him to take pleas which he has taken in paras 2 and 3 of the additional written statement. On the basis of the provisions contained in Order VI, Rule 7, CPC, he urged that the pleas which the defendant-petitioner has taken in paras 2 and 3 of the additional written statement, can only be taken after he is permitted to amend the written-statement. In other words, his submission is that if the defendant-petitioner wants to incorporate the pleas which he has mentioned in paras 2 and 3 of the additional written-statement, he should make an application for the amendment of the written statement under Order VI 17, CPC. He also referred to the provisions contained in Order VIII Rule 9, CPC dealing with the filing of the additional written statement. Strong reliance was placed on *Pannalal v. Manaklal* AIR 1970 RLW. 394 and *Dattu Sam v. Amarchand*.

8. I have considered the arguments advanced by the learned Counsel for the parties and have given my anxious and thoughtful consideration. The order dated September 7, 1977 allowing the amendment is silent in respect of the filing of the written statement. However, after the filing of the amended plaint, the trial court vide order sheet dated September 21, 1977 has specifically mentioned, as stated above, that 'the written statement to the amended plaint was to be submitted by the defendant-petitioner and for that date fixed was October 17, 1977. A perusal of the order allowing the amendment of the plaint clearly shows that the trial court did not restrict the right of the defendant-petitioner to file reply to that portion of the plaint which was incorporated by way of amendment. Further, in the order sheet dated Sept 21, 1977, the trial court did not think it proper to restrict that right in as much it directed the defendant petitioner to file written statement to the amended plaint. The learned Munsif who passed the order allowing amendment, has, while dealing with the objection raised on behalf of the plaintiff in respect of paras 2 and 3 of the additional written statement, observed that it was not ordered that defendant should file written statement to the amended portion only. From the order allowing amendment dated September 21, 1977; and the order dated January 20, 1973, I am satisfied that the right of the defendant-petitioner to file additional written-statement to the amended portion of the plaint was not restricted. Before a Division Bench of the Punjab High Court in *Girdharilal's case*, a question arose whether the additional written statement should be confined to

the amended part of the plaint only or it is open to the defendant to take new pleas while filing a written statement to the amended plaint. Dua J (as he then was) with whom D. Falshaw J agreed, observed as follows:..there is no rule of law, statutory or otherwise, which restricts or limits the defendant when he is called upon to file a written statement to an amended plaint, to contest the plaintiff's claim, to any particular pleas The general scheme of the Code of Civil Procedure and the policy underlying the law of pleadings does not suggest any such restriction & the counsel.....the question does not appear, strictly speaking, to be one of amendment of the first written statement which could only be effected with the permission of the Court. It really pertains more to the right of the defendant to contest the suit as made out in the amended plaint read as a whole. The law relating to pleadings should not be construed and applied with undue rigidity & strictness if no prejudice or embarrassment towards fair trial of the suit is caused It would of course be open to the Court to consider whether or not, being an after thought, the pleas in question lacked merit, but the right of the defendant to raise the new pleas could hardly be negated by reference to the provisions of Order 6 Rule 17 only.

The learned Judge also made the following weighty observations...The sole object of the pleadings is to see where the parties differ, and that each side may be fully alive to the questions that are about to be argued, so that they may adduce all appropriate evidence; and if this object has been achieved, then to rule out the amended pleadings would tend to defeat, instead of promoting, the cause of justice, for serving which alone the rules of procedure exist.

The matter again came up for decision before Dim, J. (as he then was) in New Bank of India's case , In that case, the amended plaint was put in, the defendant was permitted to file a fresh written-statement, if so desired. The written-statement was filed and thereafter the case was fixed for replication. In the written-statement so filed, certain pleas were apparently included which were inconsistent with the pleas in the earlier written-statement An objection was raised on behalf of the plaintiff that except in so far as the written statement was inserted, directed by the amendment of the plaint, no other variation in the amended written statement of the defendant in conflict with the earlier statement should be permitted. The

learned Judge, after considering the authorities cited before him reached the conclusion that the written-statement filed by the defendant must be allowed to remain on the record and should not be ignored by the court below merely as a matter of law on the ground of being inconsistent with the plea in the earlier written statement. The learned Judge also took note of the provisions of Order VI, Rule 7, CPC in this regard. Paragraphs 8 and 9 of this decision read as under:

In my opinion, the crucial test is, what is the nature of the order passed by the Court when permitting a fresh plea to be filed. If at that time the Court does not intend to restrict a fresh plea to be raised merely as supplementary to the trial already held and it permits a plea to be filed so that the entire trial could begin from the stage of pleadings, then, in my opinion, it is certainly open to the defendant to put in a fresh written statement untrammelled by his pleas in the earlier written statement. It would undoubtedly be for the Court to consider how far to believe the truth of the plea in the amended written statement in face of the earlier pleading and unless cogent and convincing grounds are shown for going back on the earlier pleas, the Court would in all probability rule out the subsequent plea as an after thought. I have, however not been able, as at present advised, to follow as to how the fresh written statement can be controlled by Order 6 Rule 7 of the Code, when the original order called upon the defendant to file a fresh written statement to the amended plea is not so qualified.

On behalf of the respondent it has been urged with certain amount of force that in the case in hand it must be deemed that the Court below had not reopened the entire trial but had merely directed the plaintiff to add to the relief clause an additional relief and that the defendants were also accordingly permitted merely to answer to this additional plea and not to put in an absolutely fresh written statement. Whether or not the Court below intended to adopt this procedure is far from obvious and its Order 13 certainly not clear and explicit in this respect. I can see that the amendment in the plea is of a formal nature, but in the absence of any restriction placed by the Court below, I am unable, as at present advised, to hold that as a matter of law the defendant can be debarred from putting in a fresh written statement to a fresh plea filed in pursuance of an unqualified order.

It is, therefore, clear that in the absence of any restriction placed by the trial court, the defendant cannot be debarred from putting in a fresh written statement by taken additional pleas to the amended plaint filed in pursuance of the order of the trial court. These two authorities came up for consideration before Joshi, J. in Ramdas v. Harinarain. The learned Judge took note of the provisions of Order VI, Order VII and Order VIII of the CPC & thereafter came to the conclusion that these provisions do not appear to put any bar to take additional pleas in the written-statement in answer to an amended plaint. I may mention that in that case, the additional pleas taken in the written statement pertained to the happening of subsequent event which hid material bearing on the case. The learned Judge on the basis of the reasoning given in Girdhari Sal's case held that the trial court had committed material irregularity in striking the pleas based on the subsequent event taken by the defendant in the written-statement. I may pause here to observe that the learned Judge expressed his agreement with the two Punjab cases referred to above and a judgment given by Jagat Narayan, J. (as he then was) in S.B. Civil Revision No. 353 of 1969. The decision recorded in Dattu Ram's case was also taken note of but the view taken in that case was dissented from in Pinnalal's case AIR 1970 RLW. 394 when the amended written statement was filed and certain new pleas were taken the plaintiffs objected to them relying on the decision reported in Ditturam's case that the additional written-statement should be confined to the amended portion of the plaint only. Jagat Narayan, J (as he then was), also considered the two Punjab decisions referred to above. After quoting Order VIII, Rule 9, CPC, the learned Judge observed that the later part of Order VIII, Rule 9 is applicable as it was the court which required an additional written statement from the defendants. I may refer to the following extract from para 10 of the report,-

The latter part of the above rules is applicable as it was the court which required an additional written statement from the defendants. The court intended that this written statement should be confined to the amended part of the plaint as is clear from its subsequent order, which has been challenged in revision.

Thereafter, the learned Judge proceeded to observe in para 11,-

In such cases the court should make it clear at the time of passing its order whether the written statement is to be confined to the amended part of the plaint. The court may require an additional written statement to be filed under Order VIII, Rule 9 at the time of allowing an amendment of the plaint or it may not require such an additional written statement. So it is for the court to confine the additional written statement to the amendment of the part of the plaint only or not, whether or not in a particular case the court should confine the additional written statement to the amended part of the plaint or not would depend on the facts and circumstances of a particular case and no hard or fast rule can be laid down.

There is nothing in the order permitting the amendment of the plaint dated September 7, 1977 or in the order sheet dated September 21, 1977 to suggest that the additional written statement was to be confined to the amended part of the plaint only. The decision reported in Pannalal v. Manak Lal AIR 1970 RLW. 394 is therefore not of any avail to the plaintiff-non-petitioner. It appears to me from the unreported decision of this Court referred to above that the decision in Pannalal's case AIR 1970 RLW. 394 was not brought to the notice of the learned Judge. So far as Dittu Ram's case is concerned, the learned Judicial Commissioner, after considering the Punjab decisions referred to above was of the opinion that when a plaint is allowed to be amended after the filing of the written-statement by the defendant, the intention of the court in asking the defendant to file a written statement is and should be deemed to be that the written statement should be confined to the fresh matter introduced by the amendment. The basis of the reasoning given by the learned Judicial Commissioner is that a party has no right to amend the previous pleading without the permission of the court and therefore it is not open to the defendant to take pleas which have not been taken in the original written-statement while repotting to the amended part of the plaint. I regret. I am unable to subscribe to the view taken in Dittu Ram's case for the reasons given by the learned Judge of the Punjab High Court in the two decisions referred to above. I, therefore, hold that in view of the nature of the orders passed by the trial court allowing the defendant to file written statement to the amended plaint that as a matter of law the defendant could not be debarred from submitting a fresh written statement. The additional written statement filed by the defendant must be allowed to remain on the record and should not be ignored by the court.

below.

9. For the foregoing reasons, these revision applications succeed and allowing the same, I modify the order of the court below dated January 20, 1978 and direct that the entire additional written statement should be considered as a pleading put in by the defendant. However, I want to make it clear that this does not mean that the pleas taken in paras 2 and 3 of the the additional written statement must be believed. The explanation or the modification of the pleas will be open for consideration by the trial court. In the circumstances for the case, the parties are left to bear their own costs.

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