

Ajanta Enterprises Vs. Bimla Charan Chatterjee and anr.

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Court : Rajasthan

Decided On : Jun-30-1987

Reported in : 1987(2)WLN172

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Civil Revision Petition No. 127 of 1987

Appellant : Ajanta Enterprises

Respondent : Bimla Charan Chatterjee and anr.

Disposition : Revision allowed

Judgement :

Mohini Kapoor, J.

1. This revision petition has been filed by the defendant petitioner against two orders of the Additional District Judge No. 4, Jaipur, dated 6th and 7th February, 1987, by which he has allowed the plaintiff petitioner to file a rejoinder to the written-statement filed by the petitioner. The second order of 7th February, 1987, is an order by which time has not been granted to the petitioner to file revision, which cannot be said to be of any importance in the face of the first order which has to be examined in this revision petition.

2. Briefly stated the facts are that the petitioner is a tenant of non-petitioner No. 1 against whom a suit was instituted on the ground of personal necessity. This suit was decreed by the trial court and the petitioner filed an appeal which is pending before the Additional District Judge No. 4. During the course of pendency of this appeal, he moved an application for the amendment of his written-statement. In order to introduce the facts that the plaintiff-non-petitioner had obtained a decree for eviction against the another tenant one Manmohan Corporation and after executing the same had constructed four show-rooms in that plot, out of which he retained one for himself and let-out three on rent to different persons. This amendment application was allowed by the Additional District Judge hearing the appeal by order dated 28 7-1986 but at the time a condition was imposed that he would not be given any opportunity to adduce evidence in support of the amendment. The petitioner preferred a revision before this Court, which was decided on 31-10-86 and in the interests of justice it was ordered that when the amendment had been allowed then it was necessary that the party should be allowed to adduce evidence also. It was also observed that the plaintiff-non-petitioner, if he desires, may file a rejoinder to the amended statement and then if necessary fresh issues be framed & then the matter may decided be after evidence. It was also directed that the appeal should be disposed within a period of four months.

3. In pursuance of the above order, the plaintiff-non-petitioner filed a rejoinder to the written-statement of the petitioner and to this the petitioner raised objections saying that the plaintiff could file a rejoinder with the permission of the Court only to that part of the written statement which had been amended by the petitioner. According to him it was not open to the plaintiff to file a rejoinder to the whole of the written statement. This objection of the petitioner was rejected, therefore, the petitioner has come-up in this revision.

4. The question to be decided is whether it is open to a plaintiff to file a rejoinder to the whole of the amended written-statement of the defendant after it has been amended or only to that part which has been amended.

5. The learned Counsel for the petitioner has argued that if the plaintiff is allowed to file a rejoinder to all the pleadings which have been raised in the written-statement then it would amount to change of the basis of the suit and the plaint would become a plaint on a different cause of action. In the rejoinder, plaintiff would be able to raise pleas inconsistent with the pleas raised earlier and this is not permissible. According to Order 8, Rule 9, CPC pleadings subsequent to the written-statement of a defendant other than by way of defence to a set off or counter claim shall be presented by the leave of the Court and upon such terms as the Court may accept.

6. On the other hand the learned Counsel for the non-petitioner has contended that when this Court while disposing the earlier revision has observed that the plaintiff non-petitioner can file a rejoinder to the written-statement then it is open to him to file a replica to the whole of the written statement and it is not necessary that he should confine to that part of the written-statement only which has been amended subsequently by the petitioner. He has placed reliance on *Ramchandra v. Mahendra Singh and Shakoor Padam Chand v. Jaipur Development Authority* 1986 (2) WLN 298. In *Ramchandra's* case, it has been held that when the plaintiff is allowed to amend his plaint after the filing of the written-statement then the defendant while submitting an amended written-statement is not debarred from taking additional pleas which may not be, is to arise out of the amendment made in the plaint. It is not necessary that the permission of the Court should be obtained under Order 6 Rule 17 to amend the written statement. In the other case *Shakoor Padam Chand v. Jaipur Development Authority*, Jaipur 1986 (2) WLN 298 it was held that by virtue of Section 141 CPC the provisions of Order 8, Rule 9 were applicable to miscellaneous proceedings and rejoinder could be filed to a reply to an application for grant of temporary injunction.

7. Both these cases do not deal with the scope of the rejoinder which a plaintiff can be allowed to file in reply to an amended written statement. A defendant can file written-statement as a matter of right and for doing so he does not have to obtain the permission of the Court. On the other hand, a rejoinder or a replica is not to be filed as a matter of right except to cases where the defendant has raised a plea of set off or made a counter claim but is to be filed only with the permission

of the Court and this permission has to be granted after taking into consideration all the facts and circumstances of the case, specially the pleas which have been raised in the written-statement. In the garb of submitting a rejoinder, a plaintiff cannot be allowed to introduce new pleas in his plaint so as to alter the basis of his plaint. In a rejoinder he has to simply explain if certain additional facts have been mentioned in the written-statement and the plaintiff cannot be allowed to come forward with an entirely new case in his rejoinder. The position of the plaintiff, to make changes in his plaint, cannot be the same as changes which can be allowed to be made in the written-statement, for the reason that a defendant may be allowed to make amendments, which may be different from his earlier pleas but the plaintiff cannot be allowed to alter his original cause of action on which he has come before the Court. On this process, it can be said that the plaintiff cannot by way of rejoinder introduce pleas which are not consistent with his earlier pleadings

8. In the present case the plaintiff non-petitioner has submitted a rejoinder in which he has not only replied to that portion of the written statement, which has been amended but has given a rejoinder to all the allegations made in the written-statement. This cannot be said to be permissible to him so as to introduce new facts which do not arise out of the amendment made by the defendant in his written statement. Hence, the learned Addl. District Judge has exceeded his jurisdiction in accepting a rejoinder, containing matters, which do not arise out of the amendment made in the written statement.

9. This revision is, therefore, accepted and it is directed that the lower appellate court hearing the appeal shall take into consideration only that part of the replica, submitted by the non-petitioner plaintiff which relates to the amendment made in the written statement shall not look into the remaining allegations.