

K.K. Sareen and Others Vs. Mrs. Neeta Sharma and Others

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Court : Delhi

Decided On : Sep-20-2012

Judge : V.K. Jain

Appeal No. : CS(OS) 1318 OF 2005

Appellant : K.K. Sareen and Others

Respondent : Mrs. Neeta Sharma and Others

Judgement :

V.K.JAIN, J. (ORAL)

IA No. 19926/2011 (O. 6 R. 17 CPC)

1. This is an application for amendment of the written statement. It is stated in para 2 of the application that the plaintiffs have admitted the status of defendant No. 1 as a tenant from 01.04.1993 to 30.06.1994 and, therefore, this Court has no jurisdiction to try the present suit. The applicant wants to amend the written statement by inserting the following preliminary objections:-

“That even otherwise admittedly, the defendant No. 1 had been paying the rent to the plaintiffs hence this Hon’ble court has no jurisdiction to entertain the present suit in view of the bar of section 50 of Delhi Rent Control Act, 1958.

The following sub-para is sought to be inserted after paras No.8 to 11 and the new para 17 is also sought to be inserted as follows:-

“It is submitted that the defendant No. 1 has annexed the rent receipts with her original written statement which belies the case of the plaintiff of alleged oral licensee.

It is submitted that admittedly, the defendant No. 1 had been paying rent to the plaintiffs and as such, at best the defendant No. 1 may be termed as a tenant in respect of the suit property and certainly, the defendant No. 1 is not a licensee of the plaintiffs as painted by them in the plaint and hence the suit of the plaintiffs is not maintainable before this Hon?ble Court and the plaintiffs have other efficacious remedy available to them under the rent laws before the appropriate forums.

17. That the contents of para No. 17 of the plaint are a matter of record, except that this Hon?ble Court has no jurisdiction to entertain and try the present suit in view of the bar under Section 50 of Delhi Rent Control Act, 1958. Hence no cause of action had ever arisen in favour of the plaintiffs in any manner whatsoever.”

2. The proviso to Order 6 Rule 17 of the Code of Civil Procedure provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

3. In **Vidyabai vs. Padmalatha 2009 (2) SCC 409**, referring to the proviso added to Order VI Rule 17 of CPC by way Civil Procedure Code (Amendment) Act, 2002, Supreme Court observed that the proviso is couched in a mandatory form and held that the jurisdiction of the Court to allow an application for amendment is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. The Court clearly held that no application for amendment shall be allowed unless the Court is satisfied that in spite of due diligence the matter could not be raised before the commencement of trial. The Court was of the view that the proviso puts an embargo on the exercise of jurisdiction by the Court and unless the jurisdiction fact as envisaged in the

proviso is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.

In **Rajkumar Gurawara (Dead) through LRs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Anr.** AIR 2008 SCC 2303, Supreme Court, referring to the aforesaid proviso to Rule 17 of Order VI, inter alia, observed as under:-

“The said rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings able to satisfy the court that in spite of due diligence could not raise the issue before the commencement of trial and the court satisfies their explanation, amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso.”

I had an occasion to consider aforesaid provision in **Smt. Kailash Sharma v. Sh. Jagdish Lal Sharma and Others 2010 (10) AD Del. 622**, and the following view was taken by me in this regard:-

“9. Before the proviso came to be added to Order VI Rule 17 of CPC, it was not uncommon for the unscrupulous litigants, who, for one reason or the other, were not interest in expeditious disposal of the case, to prolong the trial by seeking unnecessary and sometimes mala fide and frivolous amendments, in order to delay the progress of the trial. This mischief was sought to be remedied by the legislature by putting an embargo on the power of the Court to allow amendments,

once the trial has begun. That precisely was the objective behind adding the aforesaid proviso to the statute book. The legislative intent, therefore, needs to be given a meaningful effect and, therefore, unless the amendment sought by a party squarely falls in the four corners of the legal provision, the Courts need to discourage such amendments. The legislative intent cannot be frustrated by the Courts by giving so liberal an interpretation as to allow the amendment even where they find that the amendment now sought by the party could, on exercise of due diligence, have been conveniently sought before the trial began.”

4. The case set out in the written statement is that in the year 1991 at the time when the suit property was purchased by the plaintiffs, they assured the defendant that they would transfer and convey the same to her for a total consideration of Rs 3,50,000/-. It is further alleged that it was the consequence of the said agreement that defendant No.1 moved in the suit property in October, 1992 and renovated the same by spending a sum of Rs 4,95,000/-. Thus, a clear case has been pleaded in the written statement setting up an agreement to sell in favour of the defendant Neeta Sharma, who is the daughter of the plaintiffs.

The following issues were framed on 06.03.2006:-

“1. Whether the plaint has been verified in accordance with Order VI Rule 15 CPC? OPD

2. Whether suit discloses any cause of action in favour of the plaintiffs and against the defendants? OPP

3. Whether there was any sale consideration paid by defendant No. 1 to the plaintiffs in respect of the suit property? OPD

4. Whether the defendant No. 2 had paid Rs 16,00,000/- to the plaintiffs as a sale consideration in respect of the suit property and/or if any documents such as Agreement to Sell, Sale Deed etc. has been executed by defendant No. 2 in favour of the plaintiffs? OPD

5. Whether the defendant is entitled to a direction against the plaintiffs to execute and register Agreement to Sell, Sale Deed in respect of suit property?

6. Whether defendant No. 1 is entitled to return of the alleged balance amount with interest after adjusting the so called sale consideration?

7. Whether the plaintiffs are entitled for damages and possession of the suit property from the defendants if so, at what rate and at what interest? OPP

8. Relief.”

5. It was thus be seen that the defendant did not claim at any point of time that she was a tenant in the suit property. Accordingly no issue in this regard was framed by the Court. The evidence of the plaintiff was concluded on 25.11.2009. Thereafter, evidence of the defendant was also recorded and concluded and the parties were directed to file synopsis with list of judgments they wish to rely upon. Synopsis by the counsel for the plaintiff was filed on 06.09.2011 with copy to the opposite counsel. It was thereafter that the application for amendment of the written statement was filed. In the application under consideration, there is absolutely no explanation as to why the plea of tenancy was taken in the written statement. There is no explanation as to why the amendment was not sought before the trial began in this case. The learned counsel for the defendant states that in cross-examination the plaintiff No. 2 has admitted having executed various rent receipts in favour of Southern Comfort Fashion Limited. This, according to the learned counsel for the defendant, is the company where the defendant was employed. Even if the aforesaid company was a tenant in the suit property, the defendant herself does not acquire the status of a tenant in case the said tenancy was surrendered or otherwise expired by efflux of time. The defendant has also placed on record, a number of other rent receipts purporting to be executed in her favour by plaintiff No.2 who is her mother. The case of the plaintiff is that these rent receipts do not bear signature of plaintiff No.2 and her purported signatures on these rent receipts are forged. These rent receipts were denied during the course of admission/denial of documents as well as during cross-examination of plaintiff No. 2. Since these documents were in possession of the defendant, it was certainly possible for her to take the plea of tenancy at the time written statement was filed. If for some reason, the plea could not be taken in the original written statement, the amendment could certainly have been sought before

commencement of recording of evidence in the matter. Since the defendant has failed to establish that she despite exercise of due diligence could not have sought amendment of the written statement before commencement of the trial, the application is clearly hit by the proviso to Order 6 Rule 17 of the Code of Civil Procedure.

6. The learned counsel for the defendant/applicant has relied upon the decision of Supreme Court in **Chander Kanta Bansal v. Rajinder Singh Anand AIR 2008 Supreme Court 2234**, where the Apex Court referring to the proviso to Order 6 Rule 17 of the Code of Civil Procedure, inter alia, observed as under:-

“8. X X X X The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment.

10. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the others case. It also helps in checking the delays in filing the applications. Once the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

There is no quarrel with the proposition of law enunciated by Supreme Court in the above-referred case. But, nowhere has the Court said that an application seeking

amendment of the written statement should be allowed after the trial has practically concluded even in a case where there is no explanation at all for not seeking amendment before commencement of the trial. The Court needs to keep in mind that in the event the amendment is allowed, amended written statement will have to be taken on record and the plaintiff will have to be given an opportunity to file replication to the amended written statement. Thereafter, an issue will have to be framed with respect to the plea of tenancy which the defendant proposes to set up by way of proposed amendment. The parties will then have to be given an opportunity to lead evidence on the additional issue. This inevitably is likely to result in delaying the trial for a substantial period. Considering all these facts and circumstances of the case coupled with the fact that there is no explanation for not seeking the amendment before commencement of trial, I find no merit in the application and the same is hereby dismissed.

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List in the category of “Finals” at its turn before the Roster Bench.

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