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**(1984) 11 DEL CK 0033**

**In the Delhi High Court**

**Case No :** Civil Revision Appeal No. 1162 of 1982

Chander Prakash and Another — APPELLANT

Vs

Om Prakash Bajaj and Others — RESPONDENT

**Date of Decision :** 06-11-1984

**Acts Referred:**

**Citation :** AIR 1986 Delhi 116 : (1984) 7 DRJ 251 : (1984) RLR 657

**Hon'ble Judges :** R.N. Aggarwal, J

**Bench :** Single Bench

**Advocate :** R.S. Kela and H.N. Chaudhary, for the Appellant;

## Judgement

R.N. Aggarwal, J.

(1) A short pedigree table shall be useful in under- standing the relationship between the parties and the dispute : Jagan Nath

I Smt. Sewa Dai (wife) _____I (Deft. No, 5) 11 Prem Nath - Pran Nath Chander Parkash (Deft. No. 2) (Deft. No. 3) (Deft. No. 4) (Petr. herein)

(2) Defendants No. 6 to 8 are the sisters of defendants No. 2 to 4. Defendant No. 7 Parmila Kumari is the wife of the plaintiff Om Prakash BajaJ.

(3) Messrs Jagan Nath Prem Nath is a partnership firm of which defendant? No. 2 to 4 and their father Jagan Nath were the partners. Jagan Nath died in 1974 and the partnership was reconstituted and defendants No. 2 to 4 and their mother Smt. Sewa Dai became the partners.

(4) The plaintiff Om Prakash Bajaj has filed a suit against the firm and defendants No. 2 to 8 for recovery of Rs. 18,500.00 66 P. The Case? of the plaintiff is that the firm was in financial difficulties and from time to time he was giving loan by way of deposits and that after adjusting the-amounts received by him (Rs.3500.00 towards the principal and Rs 4984.00 towards interest) Rs. 18,500.66 P. are due from the firm and the firm has not ''paid the said amount

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inspire of demands and requests. The ''plaintiff'' in para has in support of the claim relied upon a letter dated 3rd September 1979 written to him by defendant No. 4 and another letter dated 27th September 1979 again from defendant No. 4. The case of the plaintiff is that in the said two letters his claim was accepted by defendants No. 4 and 5.

(5) Defendants No. I to 3 in their written statement admitted that some deposits were made by the plaintiff but contended that the total amount had been paid back and nothing was now due to the plaintiff. Defendants No. I to 3 denied that payment of Rs. 3500.00 was towards the principal and Rs. 4984.00 towards interest. Defendants No. I to 3 reiterated in para 12 of the written statement that the entire loan with interest had been paid back to the plaintiff. Defendants No. I to 3 pleaded that the letters dated 3rd September and 27th September 1979 have been obtained by the plaintiff in Collusion with defendants No. 4 and 5. Defendants No. I to 3 denied that cheque for Rs. 1000.00 (mentioned in the letter dated 27th September 1979) was issued by M/s. Bharat Packaging and Allied Industries and endorsed in favor of the plaintiff by defendant No. 4 at their instance.

(6) Defendants No. 4 to 8 in a joint written statement admitted the payments said to have been made by the plaintiff but pleaded that since they are not in possession of the account books they are unable to make a definite statement regarding the amount payable to the plaintiff. The said defendants further pleaded that defendants No. 2 and 3 have been managing the affairs of defendant No. I and they had the account books with them and, Therefore, defendants No. 4 and 5 are not liable. Defendant No. 4 admitted to have written the letters dated 3rd September 1979 and 2/th September 1979 and further having sent a cheque for Rs 1000.00 but pleaded that the payment of the cheque was stopped at the instance of defendants No-. 2 and 3. They further pleaded that they are unable to reply para Ii of the plaint accurately in the absence of relevant record and account books.

(7) On 7th August 1982 defendants No. 4 and 5 filed an application under Order 6 Rule 17 read with Section 151 of the CPC for permission to amend paras 7, 8, 12, 14 and 15 of the written statement. Defendants No. 4 and 5 have stated in the application that at the time of the filing of the written statement they were living with the plaintiff and that the plaintiff had by exercising undue influence obtained the letters from defendants No. 4 and 5. Defendants No. 4 and 5 stated that the loan amounts alleged in the plaint had been paid back to the plaintiff. It was further alleged that the admissions contained in the letters dated 3rd September 1979 and 27th September 1979 were obtained by the plaintiff under undue pressure and influence.

(8) The plaintiff contested the application. The trial Judge on 22nd October 1982 dismissed the application holding that the amendments sought in the written statement would change the defense and negative the admissions made by defendants No. 4 and 5 in the pleadings and this defendants No. 4 and 5 cannot

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be allowed to do at that stage of the suit, especially when the plaintiff has completed his evidence and the case is fixed for evidence of the defendants. It was also held that earlier to the said application defendants No. I to 3 had twice filed applications for amendment and this was another attempt in collusion with defendants No. I to 3. The court further found that the application is malafide and has been made to prolong the case.

(9) The observation made by the trial Judge in para 4 that a defendant cannot be allowed to make amendments in the written statement that may change the defense or negative the admissions made by the parties in the pleadings in not legally sound. In Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, it was held that an admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.

(10) Another principle which the learned Subordinate Judge has failed to consider is that an application seeking amendment of the written statement cannot be considered on the same principle as amendment of plaint. In Hari Dass and Others Vs. Kali Dass, , it was held:

"It is well settled that when considering whether the amendment should be allowed, the court need not or ought not to go into the alleged falsity of the case in the amendment nor the court ought to give its findings on the merits of the amendment sought for without first allowing the amendment, frame the issue thereon and allowing both the sides to adduce evidence. Where the defendants seel the amendment of the written statement the considerations that weight with the court in allowing amendments to the written statement are not to be covered by the same principles as amendment of a plaint. A plaintiff cannot be allowed to amend his plaint so as to alter materially or substitute his cause of action of the nature of his claim, but the same principle will not be applicable to the amendment of the defense or the written statement. Adding a new ground of defense or substituting or altering a defense does not raise the same problem as adding, altering or substituting a new cause of action. Hence the courts are inclined to be more liberal in allowing amendment of defense than of plaint."

(11) However, looking to the pleadings of the parties I do not think the amendments sought to be made in the written statement are necessary to effectively adjudicate upon the dispute between the parties. The fact that the plaintiff was making deposits from time to time is not disputed by defendants No. I to 3. The case of defendants No. I to 3 is that the deposits or the loan amounts have been paid back to the plaintiff. Defendants No. 4 ''to 8 also in their written statement have most disputed the deposits made by the plaintiff. They have pleaded that since the account books are in possession of defendants No. 2 and 3 they are unable to make any categorical statement regarding the facts and figures given by the plaintiff in para 11 of the plaint. (In para 11 the plaintiff have given the details of the amounts due from the defendants). Defendants No. I to 3 have pleaded that the letter dated 3rd September 1979 and 27th

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September 1979 were obtained by the plaintiff in collusion with defendant No. 4 Therefore, the question whether the two letters were written by defendant No. 4 in collusion with the plaintiff is already in issue. The amendments sought to be made are really not necessary for effectively adjudicating upon the dispute between the parties. The case of defendants No. I to 3 is that the loan amounts/ deposits have been paid back to the plaintiff. The decision of the suit will mainly turn on the proof whether the loan amounts/deposits have been paid back or not along with interest.

(12) For the reasons stated the petition is dismissed. No order as to costs.

(13) The parties shall appear before the Subordinate Judge concerned on 24th September 1984 for further proceedings. The records be sent back immediately.

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