

**(2000) 02 DEL CK 0083**

**In the Delhi High Court**

**Case No : I.A. No. 8114/99 in S.No. 2323/92**

Hans Rolling Shutter Works

APPELLANT

Vs

Airmen and Sailors Co-op. Group Housing Society Ltd.

RESPONDENT

**Date of Decision : 18-02-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** (2000) 5 AD 521 : (2000) 25 DLT 466 : (2000) 53 DRJ 558

**Hon'ble Judges :** J.B. Goel, J

**Bench :** Single Bench

**Advocate :** Mr. J.P. Sengh, for the Appellant; Mr. Prem Kumar, for the Respondent

## **Judgement**

J.B. Goel, J.—This is an application under Order 6, Rule 17 CPC filed by the defendant seeking certain amendment in its written statement.

2. The plaintiff has filed a suit for recovery of his dues. He is a building contractor and was engaged for carrying out certain works of providing steel doors etc. in the residential units constructed at Rohini by the defendant on the terms agreed in agreement dated 8.9.1985. Another agreement dated 15.12.1985 for additional works also entered into. Both the works are alleged to have been executed but his final bill of Rs.4,71,732.50 submitted on 16.10.1987 remained unpaid. Hence this suit for its recovery along with interest @ 24% per annum has been filed. The defendant in its written statement, inter alia, has taken the pleas that (1) the suit is time barred; (2) there is no cause of action and nothing is due from it to the plaintiff and that the claim is false, fabricated and mala fide. Issues had been framed and both the parties have led oral evidence. After the evidence of the parties was recorded, this application has been filed. The Explanation necessitating amendment is that the relevant documents were with their previous Advocate Shri Y.B.Lal who unknown to them later on had shifted from Rohini to Gurgaon and after locating his address, relevant records could be obtained on 13.8.1999 when it was discovered that amendment was necessary in paragraphs 5 and 6 of the written statement as mentioned in the application.

This application is being contested on behalf of the plaintiff in their reply and oral arguments on following grounds :-

- 1) The parties have already led oral evidence and the application is misuse of the process of the Court;
- 2) The application is mala fide, belated and to protract the suit. Delay is unreasonable.
- 3) By the amendment, an admission is being withdrawn which could not be allowed as it would cause prejudice to the plaintiff;
- 4) Explanation for seeking amendment is false as the documents were already available with the defendant and shri Y.B. Lal, Advocate had in fact died in 1995;
- 5) Amendment is not permissible in law.

3. These contentions are refuted by the learned counsel for the defendant who has contended that the amendment is necessary for just determination of the real controversy.

4. I have considered these contentions, pleadings, circumstances, material on record and the relevant case law. The amendments proposed are as under :-

"5. That the contents of para No.5 of the plaint is absolutely vague. Whilst the plaintiff has referred to only one agreement in the preceding para No.4 of the plaint, he is now claiming in this para to have performed his part of the "Aforesaid Two agreements". The plaintiff obviously has not stated the facts of the case correctly. This fact itself is a proof of the malafide intention of the plaintiff. It is pertinent to mention here that vide letter dated 10.8.87 the defendant society brought to the notice of plaintiff about his incomplete work. This letter of plaintiff was duly replied to by the plaintiff vide his letter dated 18.8.87 wherein the plaintiff acknowledged having not completed the work.

6. That para No.6 of the plaint as such is wrong and denied. It is a matter of record that the plaintiff prepared his final bill and submitted to the defendant on 6.10.87. It is also a matter of record that the defendant got the bill of plaintiff verified by its site engineer and worked out the final payable amount in accordance with the details recorded in the measurement books and obtained the certificate from the Architects and then finalised the settlement of the Bill (As per records of the Society no payment is now due for payment to the plaintiff.) It is pertinent to mention here that the measurement books of the work done by the plaintiff as certified by the site engineer and architects showed only a balance of Rs. 30,435/- towards first agreement and Rs.8,854/- towards the second agreement payable to the plaintiff. All the previous running bills were duly paid to the plaintiff to his satisfaction through cheques. The plaintiff had already received more than Rs.30,000/- from the defendant society vide cheques and more than Rs.16000/- deposited towards I. Tax and this amount was not shown as received by the plaintiff in his bills. As such from the accounts of society no

mount was due as payable to the plaintiff. The claim of the plaintiff for Rs. 4,71,732.50 is absolutely baseless, fabricated, illegal and apparently time barred."

5. The additions proposed to be made are underlined whereas the deletion made from the original paragraphs 5 and 6 have been shown in brackets.

Order 6, Rule 17 CPC provides that :-

"17 Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real question i controversy between the parties."

6. The legal position has been noticed in a number of judicial pronouncements. Some, which are relevant for this suit, are as under :-

In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, , their Lordships have held as under:-

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without prejudice to the other side."

7. An admission in favor of the plaintiff contained in a written statement could not be allowed to be withdrawn if such withdrawal would amount to displacing the case of the plaintiff and which would cause him irretrievable prejudice *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, and *Heeralal Vs. Kalyan Mal and Others*, . However, there should be valid ground for amendment of the written statement if an admission is sought to be withdrawn.

8. Broadly stated, two conditions should be satisfied: (1) that the amendment would not result in injustice to the other side; and (2) amendment is necessary for the purpose of determining the real question in controversy between the parties. And it follows that an amendment which is unnecessary and mala fide would not be permissible.

9. plaintiff has filed this suit for recovery of money. The written statement was filed on 26.8.1993. After issues were framed on January 9, 1997, both the parties led evidence by 17.8.1999 and thereafter this application was filed after a period of six years after the written statement was filed. The Explanation given for this amendment is that the documents were lying with their previous

advocate Shri Y.B. Lal and were recovered only on 13.8.1999 after his address was ascertained. This statement of fact is disputed in reply by the defendant on two grounds (1) that Shri Y.B. Lal, Advocate had died in the year 1995; and (2) the records were available in Court at the time of hearing on 11.8.1999 during cross-examination of PW-1. These two facts have not been disputed by the plaintiff as no rejoinder affidavit has been filed. Shri Y.B.Lal had died in the year 1995 and thereafter defendant is represented by another advocate. The documents would not be with Shri Y.B. Lal but with defendant or their present Advocate or should have been collected from Shri Lal. Defendant did not file documents before issues were framed or even thereafter and on 23.9.1996 a statement had been made that the defendant had not to file any document.

10. Obviously, the defendant had chosen not to file the documents not that the documents were not available with the defendant. the Explanation of seeking the amendment thus is not truthful and cannot be said to be bona fide and justified.

11. In para 5, the additional facts sought to be added are that defendant in their letter dated 10.8.1987 had pointed out to the plaintiff about incomplete work done and plaintiff's reply acknowledging this fact. This fact if correct was within the knowledge of the defendant and would have been pleaded in the written statement. This case had proceeded that the work was duly executed. By amendment, this admission is sought to be withdrawn and for its withdrawal there is no valid Explanation .This amendment, if allowed, would cause prejudice to the plaintiff and the case would have to be reopened for trial de novo. Moreover, the plea is vague and indefinite. This plea in itself will lead nowhere inasmuch as nature and extent of the work executed and that remaining unexecuted is not known and it would not help in determining the controversy between the parties.

12. The proposed amendment in para 6 of the written statement is also not likely to improve the case of the defendant in any way. The defendant has already pleaded that nothing is due from the defendant towards the work executed by the plaintiff and now it is alleged that in their account books, a sum of Rs.30,435/- and Rs.8,854/- are due to the plaintiff whereas cheques of over Rs.30,000/- and another sum of Rs.16,000/- by way of income tax deposit have been made by the defendant. The account books were available with defendant when written statement was filed and correct state of affairs could be ascertained then. Again this plea also would lead nowhere inasmuch as it is not disclosed as to what was the nature and extent of the work executed and what and when payments may have been made by the defendant. In the absence of relevant data on these points, it would not be possible to say what, if any, excess payment may have been made by the defendant. Thus the pleadings even after this proposed amendment would be obscure.

13. In the circumstances, the proposed amendments are neither necessary nor bona fide and there is no acceptable Explanation for withdrawing the admission made in the written statement.

This application thus is not bona fide but is a misuse of the process of law, intended to delay the disposal of the suit and is accordingly dismissed with costs. Costs assessed Rs.1,500/-.