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**(1979) 05 DEL CK 0037**

**In the Delhi High Court**

**Case No :** Civil Miscellaneous (Main) Appeal No. 210 of 1976

Kewal Ram Mool Chand Anand and Others

APPELLANT

Vs

S.N. Kapoor and Others

RESPONDENT

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**Date of Decision :** 04-05-1979

**Acts Referred:**

**Citation :** (1979) 16 DLT 93

**Hon'ble Judges :** S.S. Chadha, J

**Bench :** Single Bench

**Advocate :** R.K. Makhija and G.L. Rawail, for the Appellant;

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## **Judgement**

S.S. Chadha, J.

(1) This is a .petition under Article 227 of the Constitution of India seeking the setting aside of the order dated 5th July, 1976 passed by Shri S.N. Kapoor, Additional Rent Controller, Delhi rejecting an application of the amendment of the written statement.

(2) The first floor of 2, Malka Ganj, Delhi along with the parking place for car on the ground floor was let out by Shri Kundan Lal Khanna (for short-landlord) to M/s. Mool Chand Chander Bhan and its partners(for short called the tenants) in the year 1954-55 for the residence of Shri Kundan Lal Bhasin at aren"t of Rs.160.00 per month. On 18th December, 1970; the landlord filed an application for eviction of the tenants on the ground of non-payment of rent and sub-letting or otherwise parting with possession in favor of M/s. Macka Hard Private Ltd. and Shri Kundan Lal Bhasin. In the-joint written statement, a plea was taken that the premises in question were initially let out to M/s. Mool Chand Chander Bhan, partnership firm for use of the Manager, hat the Manager of M/s. Mool Chand Chander Bhan, namely. Shri Kundan Lal Bhasin has been residing in the premises, that in the year 1960 M/s. Mool Chand Chander Bhan asked the landlord to make Shri Kundan Lal Bhasin as a direct tenant and create direct tenancy in favor of Shri Kundan Lal Bhasin, that the landlord agreed and since

then Shri Kundan Lal Bhasin is a direct tenant of the premises under the landlord that at the time when the tenancy was changed in favor of Shri Kundan Lal Bhasin, M/s. Mod Chand Chander Bhan on the request of the landlord, stood guarantee for payment of rents to the landlord and that in view of these facts, it is stated that there is no relationship of landlord and tenant between the parties and Shri Kundan Lal Bhasin is a direct tenant under the landlord and he is in possession of the premises in the own rights. The question arose for passing orders under sec. 15(1) of the Delhi Rent Control Act, 1958 (for short called the Act) as one of the grounds for eviction was non-payment of arrears rent inspire of the expiry of the period of two months after service of notice. The Additional Rent Controller declined to pass orders in view of the pleadings of the parties about the denial of existence of the relationship of landlord and tenant. An appeal by the landlord before the Rent Control Tribunal was also dismissed but a direction was issued to consider the passing of the orders u/s 15(1) after recording of the evidence. The evidence was recorded. The Additional Rent Controller by order dated 11th July, 1974 held that the tenancy in favor of M/s. Mool Chand Chander Bhan and its partners continued and they are the tenants and Shri Kundan Lal Bhasin is not the tenant in the premises in dispute. Accordingly, an order under sec. 15(1) was passed directing the tenants to pay or deposit the arrears of rent at the rate of Rs. 160.00 per month from 1st December, 1967 up to the date within one month of the order and to continue to pay or deposit future rent month by month at the same rate by 15th day of each next following tenancy month. An appeal against the order dated 11th July, 1974 was dismissed by the Rent Control Tribunal on 2nd September, 1975. The second appeal against the said orders was dismissed by this Court in liming on 19th January, 1976.

(3) On the 6th April, 1976, the tenants nude an application under Order 6 Rule 17 read with Section 151 of the CPC for amendment of the written statement in view of the findings of fact recorded by the Additional Rent Controller on 11th July, 1974. By the proposed amendment, the tenants wanted to delete pleas in the previous written statement and to take the plea that the tenants admit that M/s. Mool Chand Chander Bhan and its partners continue to be the tenants in the premises and are still the tenants and Shri Kundan Lal Bhasin is merely a Manager. Bythe impugned order Shri S.N. Kapoor, 1st Additional Rent Controller, Delhi observed that the tenants wanted to get rid of their admission and statements made in this regard and want to escapes from the effect of those orders, that the application has been filed with a mala fids intention after a delay of six years in order to circumvent this admission and that the Court cannot allow any litigant to get rid of their statements and admissions made in their written statement. The second ground of rejecting the application for amendment is that there is nothing on record to indicate that M/s. Mool Chand Chander Bhan continued to do business after 1967 and it is also admitted that Kundan Lal Bhasin is presently working with some other company and he has admittedly not drawn any pay from M/s. Mool Chand Chander Bhan from 1967 and in view of

these facts, the application appears to be mala fide and has to be rejected.

(4) Mr. R.K. Makhija, the learned counsel for the tenants took me through the record of the case and urged that the proposed amendment was to bring the pleadings in conformity with the findings recorded by the Additional Rent Controller on 11th July, 1974 and there was no mala fides in explaining the admissions made in the earlier written statement. Reliance is heavily placed on a judgment of Ayadh Behari, J. in " Vishwa Math and others Vs. Chaman Lal and others" 1975 RCJ. 514. That case was noted by the Additional Rent Controller, Delhi but distinguished on facts by saying that in that case Managing Director Vishwa Nath took the premises in his own name, took the plea that the company was a tenant and he continued to be the Managing Director of that firm and in that way, he continued to remain in possession of the premises in dispute, being the Managing Director of that Company. The Distinction drawn by the Additional Rent Controller is wholly on an artificial basis.

(5) In the judgment dated 11th July, 1964 of the Additional Rent Controller, Delhi the plea of the parties as well as the evidence placed is discussed. A clerk from Desu was summoned along with the file and in that file there are two letters; one written by the landlord and other written by Shri Kundan Lal Bhasin and they were received in the D.E.S.U. Office on 10th January, 1961. In the letter. Ex. R-I, the landlord writes to the D.E.S.U. that he wants that domestic power may be sanctioned in the name of Kundan Lal who is his tenant and he is consuming electric energy in light purposes from Kn 82052. The landlord admits this letter but gives an Explanation that it was given to facilitate the taking of electric connection in the name of Shri Kundan Lal Bhasin but by that letter the landlord never intended to create tenancy in the name of Shri Kundan Lal Bhasin nor the landlord ever accepted Kundan Lal Bhasin as his tenant and nor ever charged any rent. This Explanation is accepted by the Additional Rent Controller in returning the finding that the tenancy continued to remain in the name of the tenants and was not surrendered or later transferred to Shri Kundan Lal Bhasin. Other oral evidence of the tenants was not accepted when a finding was returned that the tenancy of the tenants continued. The tenants filed an appeal against the order dated 11th July, 1974 and the appeal was dismissed on 2nd September, 1975. The Second appeal was dismissed on 19th January, 1976. The application for amendment of the written statement was filed on 6th January, 1976. Thus there is no inordinate delay in bringing the written statement in Conformity with the findings of the Additional Rent Controller dated 11th July, 1974.

(6) In Vishwa Math's case (supra), it was held :-

" AS the landlords were accepting rent from the company Vishwa Nath thought that the company had become the tenant. He did not consider that the previous legal relationship between him and the landlords continued. He assumed not entirely without justification that now the company was the tenant. He said so in his written statement. The landlords proved the tenant's letter which he wrote at

the inception of the tenancy and the draft rent note which he had signed. The Rent Controller came to the conclusion that Vishwa Nath was the tenant and that he had created an interest in favor of the company. In appeal the tenant wanted to retrace his steps and say what had been judicially found to be the true state of things. He wanted to plead by way of amendment that the tenant was Vishwa Nath and not the company. This was in consonance with the findings of the Controller. It was not a new case. That was the landlord's own case. It was the holding of the Controller as well as the tribunal. The Courts do not punish the litigants for the mistakes they make. Courts of law are not courts of penal jurisdiction. They exist for the sake of doing justice. If truth was as I think it was that Vishwa Nath was the tenant the Tribunal should have allowed the amendment. Landlord's own case was this. The tenant accepted that case in his application for amendment so that ejectment order is not passed against him on the ground of his own admission that the company is the tenant."

(7) One of the basis of the order is that the court cannot allow any litigant to get rid from there admissions in their written statement. This is contrary to law. Section 31 of the Indian Evidence Act, 1972 provides that admissions are not conclusive proof of the matters admitted. But they may operate as estoppels under the provisions thereafter contained. Admissions are not conclusive of facts stated and can be shown that they are erroneous or made under a mistakes relief. Mr. Rawal relied upon on "Ram Singh vs. Mukhtiara Singh", AIR 1953 Papsu 105 to urge that where an amendment does not amount to a mere clarification of the position put forward in the plaint or rectification of any formal defect therein, but, it allowed, would result in plaintiff's going back upon his own admissions and disproving facts which he himself asserted in the plaint and got a decision against him; such amendment would necessarily change the nature of the suit and cannot be allowed at the stage of appeal. A distinction has to be made between amendment of plaint and amendment of written statement. Adding of 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 with the result that the Courts are more liberal in allowing amendments of defense than of plaint. In Ram Singh's case (supra), the court was dealing with an application for amendment of the plaint. No refare was also made to Section 31 of the Indian Evidence Act, 1872 that the admission are not conclusive proof of the facts stated. Reliance is also placed on Shaik Masthan Sahib Vs. Palayani Balarami Reddi, wherein it was held that it is not proper to allow the defendant to raise an amendment which was a direct negation of the admission in his written statement. Again, the provisions of Section 31 of the Indian Evidence Act, 1872 have not been noticed by the learned Judges of the Madras High Court. Section 31 means that an admission, unless it amounts to estoppel, is not conclusive against the maker, as he can establish that it was erroneous or was made under a mistake of fact or law. It is open to a party to explain the circumstances and facts under which the admission was nude. Admissions by themselves are nothing more than an item of evidence. The admission do not have the quality of

conclusiveness. It will be for the Additional Rent Controller to determine the weight to be attached to the admission made in the first written statement and now retracted. But the Court cannot say that it will not allow any litigant to explain the effect of the admission made in the earlier written statement. The approach by the Court below is contrary to the principles of law.

(8) The finding of the mala fide nature of the application for amendment cannot stand scrutiny. The Court below could not determine without going into the evidence placed on the record in the statements already recorded and the supplementary statement recorded in Court on 5th July, 1976. An amendment should not be refused at the preliminary stage on the allegations of mala fides when the truth of the allegation was to be adjudged on the true valuation of the facts and evidence on the record. A prima facie view is uncalled for. It is well settled that the Court should not go into the merits of the proposed pleas while considering the applications for amendment of the written statement. The Court cannot go into or give a finding on the merits of the amendment sought. The court below records that there is nothing on record to indicate the M/s. Mool Chand Chander Bhan continued to do business after 1967 and Shri Kundanlal Bhasin is working with some other company and, Therefore, found the proposed plea patently mala fide. In order to succeed in a plea of eviction u/s 14(1)(b) of the Act, the landlord has to establish that the tenant has sub-let, assigned or otherwise parted with possession of the tenancy premises. If the finding of the Additional Rent Controller dated 11th July, 1974 is that there was no surrender of the tenancy in 1960 and the original letting to the tenants from the year 1954-55 continued, then the landlord can only succeed if he establishes on the record that Shri Kundan Lal Bhasin is a sub-tenant or an assigned or the tenants have parted with possession in favor of Shri Kundan Lal Bhasin. An half hearted reasoning by the Additional Rent Controller in saying that Shri Kundan Lal Bhasin has not drawn any pay from 1967 and that the tenants are not doing any business from 1967 cannot be appreciated, for it affects the merits of the eviction petition. On this reasoning the Additional Rent Controller Delhi could not brand the proposed plea as patently mala fide.

(9) Mr. Bawa relied upon *Laxmi Narain Oil Mills and Another Vs. Mamraj Musadilal and Others*, to urge that the Additional Rent Controller had jurisdiction in disallowing an amendment on the ground of mala fide and, Therefore, this Court cannot interfere under Article 227 of the Constitution with the exercise of that discretion. It is true that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and Tribunals within the bounds of their authority and not for correcting mere errors. The jurisdiction under Article 227 may be only supervisory but in its process it is also implicit to find out whether the Additional Rent Controller has or has not acted in accordance with the established principles. When there is violation of law or where grave dereliction of duty on the part of the Tribunal is shown; the discretionary power can be exercised. As the order of the Additional Rent Controller suffers from clear legal

infirmities and has resulted in miscarriage of justice, this Court will not hesitate in striking down that order.

(10) In the result C.M. (M) 230 of 1976 succeeds and the impugned order is quashed. The amendment prayed for is allowed. The amendment written statement be filed within one week. As the case has been pending for a considerable long time, it is desirable that it should be expeditiously disposed, of preferably within six months, after allowing the parties an opportunity of leading additional evidence. I make no orders as to costs.

(11) The parties are directed to appear before the successor (Shri R.L. Ghugh) Additional Rent Controller, Delhi on 10th May, 1979.