

(2024) 09 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1512 Of 2024

Morarji Hariram (since deceased) 1(a) Mrs. Nirmalaben
Morarji Thakkar and Ors

APPELLANT

Vs

M/s. Ramnik Dairy Farm and Ors

RESPONDENT

Date of Decision : 02-09-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 2 Rule 2, Order 6 Rule 17
Maharashtra Rent Control Act, 1999 — Section 15, 15(2), 15(3)

Citation : (2024) 09 BOM CK 0010

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Shravan M. Vyas, Jamsheed Master, Natasha Bhot

Final Decision : Allowed

Judgement

Sandeep V. Marne, J.

1) Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken for final hearing and disposal.

2) The Petitioners have filed this Petition challenging order dated 13 December 2023 passed by the Appellate Bench of the Small Causes Court by which Revision Application No. 82 of 2021 filed by original Defendant No.1 has been allowed and the application for amendment of written statement at Exhibit 80 is allowed by imposition of costs of Rs.5,000/-. The Appellate Bench has set aside order dated 9 March 2021 passed by the learned Single Judge of the Small Causes Court, which had rejected the application for amendment at Exhibit-80.

3) The Plainti? has instituted R.A.E. & R. Suit No.789/1251 of 2003 seeking recovery of possession of the suit property inter alia on the ground of arrears of rent. The Defendant has contested the Suit by filing his written statement. It appears that the plaint has been amended on three occasions resulting in filing of

additional written statements by Defendant No.1. It appears that Plaintiff No.1 passed away during the process of recording of his deposition in the year 2015 and his legal representatives are now in the process of leading evidence in support of their claim. At this stage when legal representatives of the original Plaintiff were in the process of leading their evidence that the Defendant No.1 sought to confront Plaintiff's witness with letter dated 13 October 2002 and upon the Trial Court not permitting such confrontation on account of absence of pleadings about the said letter, Defendant No.1 was advised to file application at Exhibit-80 for amendment of written statement to bring on record pleadings about said letter dated 13 October 2002. The Trial Court rejected the application at Exhibit-80. The Appellate Bench has set aside the order of the Trial Court and has allowed the application for amendment of the written statement at Exhibit-80 by its order dated 13 December 2023, which is subject matter of challenge in the present Petition.

4) I have heard Mr. Vyas, the learned counsel appearing for the Petitioners and Mr. Master, the learned counsel appearing for the Respondent No.1/Defendant No.1.

5) After having considered the submissions canvassed by the learned counsel for the respective parties, it is seen that the Suit seeking recovery of possession of the suit premises from Defendants is pending for the last 21 long years. No doubt the Plaintiff has been amended thrice by virtue of orders dated 14 March 2016, 30 August 2016 and 31 January 2018 and the Defendant No.1 filed two additional written statements. One such amendment to the plaintiff, was necessitated on account of death of original Plaintiff and for bringing on record his legal representatives. What is material to be noted in the present case is that the original Plaintiff had led evidence and was in the witness box when his death occurred in the year 2015. Now Defendant No.1 has brought into existence document dated 13 October 2002, which is alleged to have been signed by the original Plaintiff. Same is shown to have been written in connection with certain financial transactions between the parties. Relying on the said letter dated 13 October 2002, it is now the case of Defendant No.1 that original Plaintiff had borrowed certain amounts from Defendant No.1 on account of which Defendant No.1 was not liable to pay rent to original Plaintiff. Thus, the letter dated 13 October 2002 is now sought to be relied upon with a view to defeat the ground of default in payment of rent as well as to explain the conduct of the Defendants in not depositing the amount of rent as per Section 15 (3) of the Maharashtra Rent Control Act, 1999 (the MRC Act).

6) Ordinarily, the principles governing amendment of plaintiff and amendment of written statement being different, Defendants can be permitted to amend the written statement as it is permissible for Defendants to raise inconsistent pleas in the written statement. However, the said principle is subject to exception that the amendment of written statement should not cause grave injustice or irretrievable prejudice to the Plaintiff. Mr. Master has placed reliance on judgment

in Usha Balasaheb Swami and Others V/s. Kiran Appaso Swami and Others (2007) 5 SCC 602, in which the Apex Court held in paragraph Nos. 19, 21, 22 and 27 as under:-

19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

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21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357], this Court observed

"that the Courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event".

In that case this Court also held

"that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."

22. Keeping these principles in mind, namely, that in a case of amendment of a written statement the courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.

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27. As noted herein earlier, Mr. Lalit while inviting us to reject the application for amendment of the written statement as was done by the High Court had placed strong reliance on Modi Spg. & Wvg. Mills Co. Ltd. v. Wvg. Mills Co. Ltd. [(1976)4 SCC 320]. In that case, a suit was filed by the plaintiff for claiming a decree for Rs.1,30,000 against the defendants. The defendants in their written statement admitted that by virtue of an agreement dated 7-4-1967 the plaintiff worked as their stockists-cum distributor. After three years the defendants by application

under Order 6, Rule 17 of the Code sought amendment of written statement by substituting paras 25 to 26 with a new para in which they took the fresh plea that the plaintiff was a mercantile agent-cum-purchaser, meaning thereby that they sought to go beyond their earlier admission that the plaintiff was a stockist-cum-distributor. In our opinion, the present case can be distinguished from that of Modi Spg. case. In that case, the pleadings that were being made by the defendants for amendment were not merely inconsistent but were resulting in causing grave and irretrievable prejudice to the plaintiff and displacing him completely. In paragraph 10 of this decision this Court also appreciated that inconsistent pleas can be made in the pleadings but the effect of substitution of paragraphs 25 and 26 in that decision was not making inconsistent and alternative pleadings but it was seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. In the facts of that decision this Court further held that if such amendments were allowed, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. That apart in that decision the High Court also rejected the application for amendment of the written statement and agreed with the trial court. This decision in the case of Modi Spg. would not stand in the way of allowing the application for amendment of the written statement as the question of admission by the defendants made in the written statement, more particularly in para 8 of the written statement, was not at all withdrawn by the amendment but certain paragraphs were added inviting the plaintiff and defendants 1 to 7 to prove their legitimacy on the death of Appaso. That being the position, we do not think that Modi Spg. case will at all stand in the way of allowing the application for amendment of the written statement. It is true that in the case of Basavan Jaggu Dhobi 1995 Supp (3) SCC 179 this Court, in the facts of that case, held that it would not be open to a party to wriggle out of admission as admission is a material piece of (sic evidence) which would be in favour of a person who would be entitled to take advantage of that admission. In the present case, admission made in para 8 of the written statement was not at all withdrawn but only a rider and/or proviso has been added keeping the admission in tact. In that decision also this Court has appreciated the principle that even the admission can be explained and inconsistent pleas can be taken in the pleadings and thus amendment of the written statement can be allowed. In our opinion, as noted herein earlier, in the present case, the amendment would not displace the case of the plaintiff, as it would only help the court to decide whether the respondents are eligible to the said share in the property on proof of their legitimacy for which no irretrievable prejudice would be caused either to the plaintiff or to defendants 2 to 8. Accordingly, we do not think that Basavan Jaggu Dhobi could be applied in the facts of this case, which is clearly distinguishable.

(emphasis and underlining added)

7) Thus, though the application for amendment of written statement is to be considered more leniently, at the same time, Court cannot lose sight of the fact that if such amendment is aimed at causing any serious prejudice to the Plaintiff,

the Court would not hesitate in rejecting such application for amendment of written statement. In *Life Insurance Corporation of India V/s. Sanjeev Builders Private Limited and Another* (2022) 16 SCC 1 the Apex Court, while summarising conclusions relating to amendment of pleadings, has held in paragraph 71.4 that a prayer for amendment of pleadings is generally required to be allowed, provided such amendment does not cause loss of a valid defence to the other side and does not result in injustice to the other side. The Apex Court in paragraph 71 held as under:

71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

71.3 The prayer for amendment is to be allowed :

71.3.1 If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration.

71.4.2 The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5 In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially

where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7 Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8 Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9 Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897).

(emphasis added)

8) In the present case Defendant No.1 has introduced the amendment after death of the original Plaintiff. If the amendment was to be introduced during the lifetime of original Plaintiff, he would have been in a position to give evidence about the alleged signature appearing on the said letter dated 13 October 2002. Now the original Plaintiff is no more and after his death, Defendant No.1 has thought of bringing pleadings about letter dated 13 October 2002 on record. The heirs of original Plaintiff, who are now prosecuting the Suit, may not be able to explain their father's alleged signature on the concerned document. Absence of original Plaintiff to give evidence about the alleged letter dated 13 October 2002 would unduly cause severe prejudice to the heirs of the original Plaintiff while prosecuting the Suit. If the defence of letter dated 13 October 2002 was to be raised in the original written statement, the original Plaintiff would have dealt

with the same. Raising of the said defence by filing application for amendment, 16 years after filing of Suit and particularly after the death of the original Plaintiff, would unduly cause severe prejudice to the stand of the Plaintiff.

9) The reason for introducing the amendment at this belated stage also need to be appreciated. The suit is for ejectment on the ground of arrears of rent. On tenant's failure to avail the twin opportunities of making good default under sub-sections (2) and (3) of section 15 of the MRC Act before and after institution of suit, his eviction becomes eminent. Seen from this perspective, proposed pleadings about the alleged letter dated 13 October 2002 after death of original Plaintiff is clearly aimed at defeating the ground of default by taking advantage of original Plaintiff's death. The amendment, to my mind, does not appear to be bonafide.

10) In my view, therefore, the application for amendment of the written statement for introducing pleadings about alleged letter dated 13 October 2002 was rightly rejected by the Trial Court. Mr. Vyas has relied upon judgment of the Apex Court in Chander Kanta Bansal V/s. Rajinder Singh Anand MANU/SC/7310/2008 involving similar facts and circumstances. The Apex Court has noted the facts of the case in paragraph 4 as under:-

4. The respondent herein (Plaintiff) filed of Senior Sub-Judge, Delhi praying a suit No. 261 of 1986 on the file decree for mandatory injunction against the defendant (appellant- herein) to remove all obstructions at point "X" and lock at point "Y" in the site plan of the property No. 13/20, Punjabi Bagh Extn. New Delhi and also not to put the lock at main gate of the property. In the same prayer, the Plaintiff has prayed that the defendant may further be directed not to obstruct the Plaintiff, his family members or relations from using the common drive way from point "Y" to "Z" in the site plan. The said suit was filed on 23.05.1986, the defendant filed a written statement even in the year 1986 itself. While so, on 12.05.2004, the defendant filed an application for amendment of written statement under Order VI Rule 17 read with Section 151 CPC. The main reason for seeking the amendment in the written statement is that the defendant is the house wife and earlier was assisted by his son, namely, Sunit Gupta, who was a Chartered Accountant. He died at the young age i.e. in 1998. According to the defendant, he was following the litigation and the document/agreement pertaining to the parties was in his custody. Only her another son, namely, Navneet Agrawal searched the papers/documents of his brother Sunit Gupta and located an agreement dated 10.09.1982. Since the said agreement is material one and has a bearing on the dispute between the parties and the execution of the same is admitted by the Plaintiff, her application may be allowed by permitting the defendant to raise the plea of the agreement dated 10.09.1982 is her written statement and mark the same as a document of the defendant.

11) After noting that the amendment in the written statement was sought to be introduced after period of 21 long years, the Apex Court held in paragraphs 9, 12 and 13 as under:

9. 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.

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12) As observed earlier, the suit filed in the year 1986 is for a right of passage between two portions of the same property dragged for a period of 21 years. In spite of long delay, if acceptable material/materials placed before the court show that the delay was beyond their control or diligence, it would be possible for the court to consider the same by compensating the other side by awarding cost. As pointed out earlier, when she gave evidence as D.W.1, there was no whisper about the written document/partition between the parties. On the other hand, she asserted that partition was oral. Now by filing the said application, she wants to retract what she pleaded in the written statement, undoubtedly it would deprive the claim of the plaintiff. We are also satisfied that she failed to substantiate inordinate delay in filing the application that too after closing of evidence and arguments. All these aspects have been considered by the High Court. We do not find any ground for interference in the order of the High Court, on the other hand, we are in entire agreement with the same.

13. In the light of the above discussion, the appeal fails and the same is dismissed. No costs. It is made clear that we have not expressed anything on the stand taken by both parties in the suit and it is for the trial Court to dispose of the same uninfluenced by any of the observation made above within a period of three months from the date of receipt of copy of this judgment.

12) In the present case apart from the belated stage at which the amendment of the written statement is sought to be introduced, the main ground on which the amendment ought to be rejected is cause of prejudice to heirs of original Plaintiff on account of introduction of such amendment after death of their father. It must be borne in mind that the Suit is filed for recovery of possession of the suit premises on the ground of default in payment of rent. Statutory scheme under Section 15 of the MRC Act is such that landlord needs to be served a notice demanding arrears of rent under Section 15(2) of the MRC Act. Upon receipt of such notice the tenant is required to pay the amount demanded in the notice. Upon expiry of period of 90 days from the date of service of notice, the landlord is entitled to file a Suit for eviction of the tenant. Tenant gets a second opportunity by depositing the arrears of rent, interest and costs of the Suit within 90 days of service of suit summons. It is in the light of above statutory scheme,

rights between the parties have apparently crystalised on account of failure of the Defendants in not paying the arrears of rent after receipt of demand notice. If there is failure on the part of the Defendant to deposit amount of arrears of rent, interest and costs of the Suit within 90 days of receipt of suit summons, the same would have material bearing on Plaintiff's prayer for eviction of Defendant. Therefore, Plaintiff ought to have been given due and full opportunity to deal with defence relating to the letter dated 13 October 2002 on the basis of which, first Defendant now desires to contend that the original Plaintiff had borrowed certain amounts on account of which the rent was not payable. Said defence ought to have been put to original Plaintiff, who is the best person to deal with the same. First Defendant clearly wants to take benefit of death of original Plaintiff and has filed the application for amendment only after his death. Otherwise, when the original Plaintiff was being cross examined, Defendant No.1 never confronted him with the letter dated 13 October 2002. This is the reason why there is reason to believe that the amendment is not bonafide.

13) Considering the facts and circumstances of the present case, in my view, the application for amendment of the written statement deserved rejection on three grounds of (i) causing severe prejudice to the Plaintiff, (ii) amendment not be bonafide and (iii) filing of the amendment application after elapse of period of 16 years.

14) The order passed by the Appellate Bench of the Small Causes Court on 13 December 2023 is thus indefensible and the same is liable to be set aside. Writ Petition accordingly succeeds. Order dated 13 December 2023 passed by the Appellate Bench of the Small Causes Court is set aside and order dated 9 March 2021 passed by the learned Judge of the Small Causes Court is confirmed. The application for amendment of written statement at Exhibit -80 is accordingly dismissed.

15) The Writ Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

16) After the order is pronounced, Mr. Master, the learned counsel for the Respondent requests for stay for operation of the order for a period of eight weeks. Request is opposed by Mr. Vyas.

17) Considering the circumstances that the Suit is pending for last 21 long years, I am not inclined to stay the order, which would further delay the decision in the Suit. Request for stay is accordingly rejected.