

(2014) 09 AHC CK 0174
In the Allahabad High Court
Case No : S.C.C. Revision No. 153 of 2014

Punjab and Sind Bank

APPELLANT

Vs

Pratush Jain

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 6 Rule 17
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2014) 11 ADJ 516 : (2015) 1 ALJ 55 : (2014) 107 ALR 605

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Abhishek Tandon, Advocate for the Appellant; Ashish Kumar Singh and Ajai Kumar Singh, Advocate for the Respondent

Judgement

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Pradeep Kumar Singh Baghel, J.—This revision under section 25 of the Provincial Small Causes Courts Act, 1887 has been preferred by the tenant-defendant, Punjab and Sind Bank, against the order dated 12th December, 2013 passed by the Additional District Judge, Court No. 7, Saharanpur in Small Cause Suit No. 27 of 2008 (Pratyush Jain v. Punjab and Sind Bank and others), whereby the amendment application (Paper No. 258C-1) filed by the plaintiff-landlord has been allowed. The essential facts are that the respondent No. 1 is the landlord of the premises in dispute, bearing Municipal No. 2/1374/1, Court Road, District Saharanpur, which was let out to the revisionist-defendant, Punjab and Sind Bank, vide lease-deed dated 24th April, 2000. Initially the lease was effective till 31st May, 2003 at the rate of Rs. 20,000/- per month. It was also provided in the lease-deed that after the term is over, the lease can be extended for a further period of five years. The plaintiff-landlord instituted a suit for eviction and damages for use and occupation of the said premises on 24th July, 2008 in the Court of Judge, Small Cause, Saharanpur. Said suit was registered as Small Cause Suit No. 27 of 2008 (Pratyush Jain v. Punjab and Sind Bank and others).

The tenant-bank contested the suit and filed its written statement.

2. In the said suit, on 26th November, 2013 the plaintiff-landlord moved an application (Paper No. 258C-1) under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short, the "C.P.C.") supported by an affidavit seeking amendment in paragraph-9 and Relief-B of the plaint, thereby the damages of Rs. 800/- per day for use and occupation was sought to be amended to Rs. 6800/- per day. It was contended by the landlord in the amendment application that in the recent time the Court Road, Saharanpur has become a commercial locality and in the last 8-10 years, there is a sharp rise in the rental values of the area. Several Government and private companies and other commercial establishments are taking the buildings on rent at the rate of about Rs. 100/- to Rs. 125/- per square foot. In support of the said averments, a lease-deed dated 24th November, 2012 executed with ICICI Bank in respect of a property, which is situated in the vicinity of the disputed premises, was also sought to be filed. In the said lease-deed, carpet area of the premises was 3426 square feet and the agreed rent between the parties was Rs. 3,35,000/- per month. According to the landlord-plaintiff, in view of the said subsequent development, he was entitled for damages at the rate of Rs. 6,800/- per day in place of Rs. 800/- per day, which was claimed in the plaint.

3. The revisionist-tenant has filed its objection alongwith affidavit dated 27th November, 2013 (being Paper Nos. 262-C and 263-C) against the said amendment application. The Court below/Additional District Judge vide impugned order 12th December, 2013 has allowed the amendment application. From the records it transpires that the revisionist-bank has already filed its additional written statement in the suit and the trial has commenced in respect of the amended plaint.

4. I have heard Sri Abhishek Tandon, learned Counsel for the revisionist-tenant, and Sri Ashish Kumar Singh, learned Counsel for the respondent-landlord.

5. Learned Counsel for the revisionist submits that the claim of the plaintiff-landlord was barred by the provisions of Order II, Rule 2, C.P.C., as once the other part of the claim has been relinquished by the plaintiff by restricting his claim towards damages and occupation to Rs. 800/- per day then the same could not have been enhanced by the landlord at a later stage through the amendment application. He further urged that the said amendment was barred by time as the landlord could have only claimed the enhanced damages for the past three years from the date of the amendment application i.e., since 26th November, 2010, and not with effect from 24th July, 2008 i.e., from the date of filing of the suit.

6. Learned Counsel for the respondent-landlord submits that the amendment application was moved on the basis of the subsequent event and no new case has been introduced through the amendment application; only the amount off 800/- per day towards damages was sought to be increased to Rs. 6,800/- per day; and, the revisionist -bank is not adversely affected by the impugned order

since allowing of the amendment application dated 26th November, 2013 does not amount to an adjudication of the damages and burden to prove the amount of damages during the trial still lies with the plaintiff-landlord. He further urged that the amendment regarding enhancement of damages from Rs. 800/- per day to Rs. 6,800/- per day was not barred by any law including Order II, Rule 2, C.P.C. as the suit was still pending at the time of passing of the impugned order dated 12th December, 2013. Lastly, he urged that no prejudice has been caused to the revisionist-defendant by allowing the amendment application.

7. Learned Counsel for the respondent has placed reliance on the judgments of the Supreme Court in the case of Andhra Bank Vs. ABN Amro Bank N.V. and Others, and Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, .

8. I have considered the rival submissions advanced by the learned Counsel for the parties and perused the record.

9. The plaintiff-landlord has sought the amendment only in respect of the rate of damages. In the amendment application he took the plea that the premises in dispute was let out to the defendant-bank in the year 2000 and on the basis of the rent prevailing at that point of time he had claimed the damages at the rate of Rs. 800/- per day. However, in the recent time, the rental value of the commercial buildings in the vicinity has increased sharply, therefore, he sought the damages in terms of the prevailing rent in the area. The Trial Court has recorded a finding that the amendment sought for by the plaintiff-landlord does not introduce any new case but only on the basis of the subsequent event the amendment has been sought for. Thus, said damages, which has been increased, is not a contractual and the plaintiff has to prove the said demand by filing the evidence.

10. Law in respect of the amendments of the pleadings and relief is well established. The Supreme Court in a recent decision in the case of Revajeeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, has laid down several factors to be taken into consideration while dealing with the application for amendment. The relevant part of the judgment reads as under:

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI, Rule 17. These are only illustrative and not exhaustive."

11. In the case of B.K. Narayana Pillai v. Parameswaran Pillai and another, 2000 (38) ALR 338 (SC) an amendment was sought in the written statement after the trial began by adding alternative plea. The amendment was rejected by the Court below. The Supreme Court set aside the order rejecting the amendment and observed as under:

"3. The purpose and object of Order VI, Rule 17, C.P.C. is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

12. Similar view was taken by the Supreme Court in the case of Suraj Prakash Bhasin Vs. Smt. Raj Rani Bhasin and Others, .

13. In Andhra Bank (supra) the Supreme Court held that while allowing an application for amendment of the pleadings, it is not necessary that the Court should examine the question on merit of such amendment. The only question the Court should consider at that time is whether the amendment of pleadings would be necessary for decision of the real controversy between the parties in the suit.

14. The Supreme Court in Rajesh Kumar Aggarwal and others (supra) observed that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings and the purpose of the rule is for determining the real question in controversy between the parties subject to certain conditions. The relevant part of the judgment reads as under:

"15. This rule declares that 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. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The provision enacts that no application for amendment should be allowed after the

trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the part could not have raised the matter for which amendment is sought before the commencement of the trial.

16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI, Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleadings. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties."

15. Keeping in mind the aforesaid principle, I find that the findings of the Court below in the impugned order do not suffer from any error of law. The Court below has exercised its discretion on the sound principle of law and it does not warrant any interference in the revisional jurisdiction of this Court under section 25 of the Small Causes Courts Act, 1887.

16. Thus, the revision lacks merit and it is, accordingly, dismissed. No order as to costs.