

(2007) 08 DEL CK 0004

In the Delhi High Court

Case No : C.M. (M) No"s. 1932-33 of 2005

Shri Shilwanti Kewal Ramani and Another

APPELLANT

Vs

Shri Balram Saini

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 6 Rule 17, Order 7 Rule 11, 151

Criminal Procedure Code, 1973 (CrPC) — Section 340

Delhi Rent Control Act, 1958 — Section 14(1), 15(2)

Citation : (2007) 08 DEL CK 0004

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sarat Chandra and Sachin Chandra, for the Appellant; O.P. Hans, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioners have impugned the order dated 4th August, 2005 of Rent Controller Tribunal dismissing their appeal against the order dated 5th April, 2005 by Additional Rent Controller dismissing their application under Order VI Rule 17 of CPC to amend their written statement filed in the eviction petition u/s 14(1)(b) of Delhi Rent Control Act, 1958.

2. The respondent filed an eviction petition against the petitioners and Shri Himmat Singh contending that Smt. Shilawanti Kewal Ramani is the tenant in respect of shop in property bearing No. WZ-508 C, Tanwar Marg, Basai Darapur, New Delhi, at Rs. 500/- per month who has sublet, assigned or otherwise parted with the possession of the premises to Smt. Preet Kewal Ramani and Shri Himmat Singh, on 6th October, 1996.

3. The eviction petition was contested by the petitioners who filed a joint written statement. In reply to the allegation of the respondent that the petitioner No. 1 is a tenant, it was contended in the written statement by petitioners that their

exist no relationship of landlord and tenant between them and respondent.

4. Para 4 of the written statement filed by the petitioners is as under:

That there exists no relationship of landlord and tenant between petitioner and answering respondents and hence the petition is liable to be dismissed.

5. That the respondent No. 3 (alleged Himmat Singh) is a fictitious person as held vide order dt. 1.9.2000 by Sh. O.P. Saini, Ld. Senior Civil Judge, Delhi while dismissing Regular Appeal No. 194 of 2000 filed by the petitioner against respondent No. 2 and respondent No. 3 herein. Thus not only the petition is liable to be dismissed but also the petitioner is liable to be prosecuted and punished for perjury u/s 340 Cr.P.C., for which a separate application is being filed for falsely verifying the petition.

6. That there is absolutely no cause of action to file the instant petition which is liable to be rejected under Order 7 Rule 11(a) and (d) C.P.C.

7. That the petitioner in Ex.31 of 99 in the court of Sh. Sanjiv Jain, Ld. Civil Judge, Delhi, has alleged the answering Respondent No. 2 (Smt. Preet Kewalramani) to be his tenant, while in reply to Suit No. 423 of 96 filed by M/s. Preet Meters a duly registered partnership firm along with answering respondents No. 1 and 2 (as partners) for permanent injunction in the court of Sh. Narinder Kumar, the then Ld. Civil Judge, Delhi, petitioner alleged that Sh. C.H.Kewalramani is the tenant. The petition is Therefore liable to be rejected under Order 7 Rule 11(d) C.P.C.

5. The said written statement dated 10th March, 2001 was filed in eviction petition No. 108 of 2000 of the respondents. The eviction petition dated 2nd June, 2000 was filed by the respondent u/s 14(1)(b) of Delhi Rent Control Act, 1958.

6. That a suit was filed by the petitioners and M/s. Preet Meters against the respondent being Suit No. 423/1996 where an application under Order XXIII Rule 1 read with Section 151 of CPC was filed by the parties to the said suit where it was contended that the respondent is the owner/landlord of the property in question who has filed the eviction petition against the petitioners. In the said suit, it was contended by the respondent that since he has already filed an eviction petition, it is apparent that he had no intention to evict the petitioners without due process of law. It was also contended by the respondent that he has given similar statement through his counsel in CM(M) No. 402/2002 titled Smt. Shilawanti Kewal Ramani v. Shri Balram Saini. Reliance was placed on the order dated 16th January, 2003 passed in CM(M) No. 402/2002 and CM No. 807/2002, which order is as under:

CM(M) 402/02 and CM 807/02

I have heard counsel for the parties at length. Counsel for respondent has stated that the respondent herein will make a statement in the civil suit filed by the

petitioner, which is pending in the court of Mr. R.K. Singh, Civil Judge that since a petition for eviction of the petitioners Smt. Shilawanti Kewal Ramani and Smt. Preet Kewal Ramani has already been filed and that these persons claim themselves to be in possession of the premises as tenant being partner of the partnership firm, Therefore, the petitioner will not evict them otherwise then in due course of law. He further stated the respondent does not admit that petitioner No. 1 Smt. Shilwanti Kewal Ramani is in physical possession of the premises now since the eviction is sought on the ground of sub-letting. Anyhow, counsel for respondent has requested for a short adjournment to enable the respondent to make statement before the trial court and get the suit disposed of. Renotify on 05.02.2003.

7. In the application filed before the Civil Judge in Suit No. 423/1996 along with application under Order XXIII Rule 1 read with Section 151 of Code of Civil Procedure, an affidavit was filed by petitioner No. 2 contending that she and the petitioner No. 1 are in occupation of the suit premises as tenants under respondent/landlord. The affidavit was also filed by the respondent stipulating that the contents of the application under Order XXIII Rule 1 are correct. Pursuant to the application filed by the petitioners and the respondent and M/s. Preet Meters, the Civil Suit filed by M/s. Preet Meters and the petitioners was disposed of holding that the respondent Shri Balram Saini, shall be bound by his statement.

8. After the application under Order XXIII Rule 1 was filed in the civil suit, which was filed by Preet Meters and the petitioners, they filed an application under Order VI Rule 17 in the eviction petition for amendment of their written statement contending that they have been held to be the partners of M/s. Preet Meters, a registered partnership firm, and they are in possession of the premises in dispute as has also been held by the High Court in CM(M) No. 402/2002 by order dated 16th January, 2003.

9. The petitioners contended that the order dated 16th January, 2003 has been acted upon as the suit and connected appeal have since been withdrawn and the suit has been disposed of on account of a joint application filed by the parties under Order XXIII Rule 1 read with Section 151 of CPC and, Therefore, the petitioner sought amendment of their written statement. The petitioners categorically sought by the proposed amendment that petitioners are the partners of M/s. Preet Meters as had been held by High Court in CM(M) No. 402/2002 on 16th January, 2003 and, Therefore, no case for subletting had been made out by petitioner No. 1 to petitioner No. 2 and, Therefore, they cannot be evicted from the suit premises and the eviction petition does not survive. It was further sought to be incorporated by amendment in the written statement that M/s Preet Meters is the tenant whereas the petitioners are its partners and are thus in rightful possession of the tenanted premises. The petitioners also contended that the premises in dispute was forcibly occupied by the respondent on 18th September, 1999 in execution of decree obtained fraudulently by him from

Faizabad Court in the fictitious name of one Himmat Singh who had been arrayed earlier as respondent No. 3 in the eviction petition. The possession of the premises was later on restored to Smt. Preet Kewal Ramani, partner of M/s. Preet Meters, on 24th September, 2000 pursuant to the order dated 2nd June, 2000. The petitioners also contended that the tenanted premises is no more useful as it is neither livable nor any furniture nor any electricity and water connection are there and no steps have been taken by the respondent to restore the premises in useable condition and, Therefore, the petitioners are entitled for suspension of rent.

10. The application for amendment by the petitioners was contested by the respondent contending that the amendment sought by the petitioners will change the entire nature of written statement and the petitioners cannot be allowed to resile from their own admission in the written statement and subsequently there has not been any change of events. It was also contended that Smt. Shilawanti Kewal Ramani had filed an eviction petition admitting herself to be the tenant and she had examined Shri Balram Saini as her own witness. It was also contended that petitioner No. 2 is an employee with the Bank and she cannot be even expected to be the partner of M/s. Preet Meters. The plea raised by the petitioners that the High Court had held in CM(M) No. 402/2002 that M/s. Preet Meters as a partnership firm or the petitioners as partners, was not admitted. The respondent also contended that the proposed amendment cannot be allowed, as petitioner No. 2 had stated that she is not in possession of the suit premises and an order u/s 15(2) of Delhi Rent Control Act, 1958 had been passed only against the petitioner No. 1 and as the rent receipts were issued in the name of petitioner No. 1 and the proposed amendment will totally change the nature of the written statement.

11. Learned Additional Rent Controller dismissed the application of the petitioner for amendment of the written statement under Order VI Rule 17 of CPC on the ground that order of the Court cannot be a ground for amendment of the written statement. because if an order has already been passed and it is on record, it can be referred to as and when required. It was held that if the High Court has held that petitioner Nos. 1 and 2 are the partners of M/s. Preet Meters and M/s. Preet Meters was the tenant then the finding shall be sufficient and no amendment to that effect is required. On merits, the Additional Rent Controller held that in the written statement already filed by the petitioners, it was contended by them that they are not the tenants and nowhere it had been pleaded by them that M/s. Preet Meters was a tenant and petitioner Nos. 1 and 2 are its partners. Emphasis was also laid on the fact that in the entire written statement there has not been any mention of the partnership or petitioner Nos. 1 and 2 being its partners and, Therefore, the proposed stand taken in the application for amendment could not be permitted in law.

12. The appeal filed by the petitioners was also dismissed by Additional Rent Control Tribunal on the ground that the proposed amendment for incorporating

the plea that a partnership firm comprising petitioner Nos. 1 and 2 are tenants, was clearly unwarranted and in the order dated 16th January, 2003 passed in CM(M) No. 402/2002 no such finding had been given because the order stipulates "the claim of the petitioner" which is construed as "as held by the High Court".

13. I have heard the learned Counsel for the parties at length and have also perused the pleadings and the documents filed by the parties. This cannot be disputed that in the written statement filed by petitioners to the eviction petition filed by the respondent on the ground of subletting u/s 14(1)(b) of Delhi Rent Control Act, it was contended by the petitioners that they are not the tenants. Subsequently, a suit was filed by them along with the partnership firm where it was contended by them that the partnership firm is the tenant and they are the partners and in this suit which was for injunction, that the partnership firm and the petitioner should not be dispossessed without due process of law, the order dated 16th January, 2003 was passed by the High Court in CM(M) No. 402/2002.

14. It is correct that the petitioners in this case may not be entitled to amend the written statement on the basis of said order dated 16th January, 2003 because it had been held in the said order that petitioners claimed themselves to be in possession of the premises as tenant being partners of the firm and the High Court had not held that the petitioners and their partnership firm is a tenant. Consequently, on this ground the amendment to the written statement cannot be permitted.

15. However, the apparent facts are that petitioners first denied that they are the tenants in reply to the averments made in the petition regarding subletting of the premises. Obviously, the petitioners were under a mis- conception that they are not the tenants but their partnership firm was a tenant. Though this fact has not been categorically stated by them in the written statement but immediately after filing the written statement, another suit for injunction was filed on behalf of partnership firm where petitioners were also a party in respect of which the order dated 16th January, 2003 in CM(M) No. 402/2002 was passed.

16. The legal proposition that partnership is nothing but a compendious name of the partners cannot be denied and in case a partnership firm is inducted as a tenant, the partners of the said firm, on the date tenancy was created, shall be the tenants. The learned Counsel for the petitioners contended that the petitioners were under the mis-conception that it is the partnership firm which is the tenant, Therefore, denied that they are the tenants. Now by amendment they want to contend that if the partnership firm is a tenant then partnership is nothing but the compendious name of the partners and Therefore the petitioners are the tenants.

17. The law pertaining to amendment is quite liberal and amendment sought in the written statement are to be allowed unless the proposed amendment tantamount to withdrawal of an admission made by the petitioners-tenants which

had created a tangible right in favor of the respondent because a right which has accrued to the respondent-landlord cannot be taken away by the petitioners-tenants by amending the written statement.

18. It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.

19. The Apex Court in a judgment in B.K.N. Narayana Pillai Vs. P. Pillai and Another, after referring to a number of decisions, in para 3 has stated, thus: (SCC p. 715)

3. The purpose and object of Order 6 Rule 17 CPC 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.

20. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

21. In A.K. Gupta and Sons Vs. Damodar Valley Corporation, the Supreme Court had held: (AIR pp.97-98, para 7)

The general rule, no doubt, is that a party is not allowed by amendment to set

up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See AIR 1921 50 (Privy Council) and *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*,

22. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties are permitted to be made. The question of delay in moving an application for amendment is decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

23. In the present case, the plea of the respondent-landlord is that the petitioners are the tenants. Consequently, the respondent/landlord, irrespective of the plea taken by the petitioners as the respondent in the eviction petition, had to establish that the petitioners are the tenants. By proposed amendment, the petitioners want to admit that they are the tenants. In the circumstances, it cannot be inferred that proposed amendment tantamount to withdrawal of admission made by them that they are not the tenant. Admitting the plea of the respondent/landlord by the proposed amendment that the petitioners are the tenants, will not cause any prejudice to the respondent-landlord rather it is necessary for the determination of real controversies between the parties. The respondent-landlord's plea is that petitioner Nos. 1 is a tenant and petitioner No. 2 is a sub tenant which was denied by them in the first instance and by amendment the petitioner Nos. 1 and 2 wants to contend that they are the tenants and admit the plea of the respondent that the petitioner No. 1 is a tenants. In the circumstances, the amendment should have been allowed and the Controller and the Additional Rent Control Tribunal have committed a patent illegality in dismissing the application of the petitioners for the amendment.

24. For the foregoing reasons, I set aside the order of Rent Control Tribunal dated 4th August, 2005 in RCA No. 246 of 2005 and order dated 5th April, 2005 of Additional Rent Controller in EA No. 75/2004 dismissing the application of the

petitioners for amendment of the written statement. The application for amendment of the written statement by the petitioner is, Therefore, allowed, subject to a cost of Rs. 5,000/- payable by petitioners to the respondent. The amended written statement shall be filed by the petitioners incorporating the amendment sought by them in the written statement within four weeks. The present petition is, Therefore, allowed in terms hereof and parties are left to bear their own costs. The parties shall appear before the Additional Rent Controller on 27th August, 2007.