

\* **HIGH COURT OF DELHI : NEW DELHI**

**CM (M) No.875/2010 & CM No.12028/2010**

% Judgment reserved on: 13<sup>th</sup> July, 2010

Judgment delivered on: 16<sup>th</sup> July, 2010

M/s. Advance Steel Tubes Limited  
Shyam Bhawan  
15/1, 3<sup>rd</sup> Floor (Front Portion)  
Asaf Ali Road  
New Delhi-110012

Also at

81, Functional Industrial Estate  
Patparganj, Delhi-110092

Represented by its authorised representative  
Sri. Subash Chand Jain

....Petitioner.

Through: Mr. J.P. Singh, Sr. Adv. with Mr.  
Sumeet Batra and Mr. Jogya Scaria,  
Advts.

Versus

S.K. Aggarwal  
W/o. Late L.S. Agarwal  
30B, Malcha Marg  
New Delhi-110021

....Respondent.

Through: Nemo.

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

- |                                                                              |     |
|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**V.B.Gupta, J.**

Petitioner has filed the present petition under Article 227 of the Constitution of India, challenging order dated 1<sup>st</sup> June, 2010 passed by Additional District Judge, Delhi, vide which application of petitioner under Order 6 Rule 17 of Code of Civil Procedure (for short as 'Code') for amendment of written statement was dismissed.

2. Brief facts of this case are that respondent herein filed a suit for recovery of possession, arrears of rent, damages and future mesne profits/damages against the petitioner. Para 1 of the plaint reads as under;

“That the plaintiff is the absolute owner and landlady of the property bearing No.15/1, Asaf Ali Road, New Delhi-110002”

3. Para 2 of the plaint among other things states;

“That the defendant is a tenant of the plaintiff in respect of the front portion on the third floor of property bearing No.15/1, Asaf Ali Road, New Delhi-110002.”

4. Petitioner in its written statement in reply to para 1 of the plaint states;

“That the averments in Para No.1 of the plaint is a matter of record and hence the same does not warrant any reply from the defendant.”

5. While in reply to para-2 of the plaint among other things, petitioner states;

“That relation between the plaintiff and defendants are governed by the lease deed dated 1<sup>st</sup> August, 1993.”

6. Petitioner moved an application before the trial court for amendment of the written statement and wanted to incorporate following paras, after para 2 of the preliminary objection of his written statement, as paras 2A, 2B, 2C, 2D and 2E;

“2A) That the present suit filed by the plaintiff is bad for non-joinder of necessary parties and as such the plaint is liable to be dismissed on that ground itself. The defendant has entered into the agreement for lease dated 1.8.1993, for leasing the plaint schedule property with Mrs. S.K. Aggarwal and Mr. Harsh Kumar Aggarwal. At the time of entering into the agreement the defendant was represented by both Mrs. S.K. Aggarwal and Mr. Harsh Kumar Aggarwal that they are the owners of the plaint schedule property and accordingly the defendant has entered into the said lease agreement. That the defendant has been paying the rent of the suit property in the name of the plaintiff on the basis of the admission of Mr. Harsh Kumar Aggarwal that the rent may be paid in the name of S.K. Aggarwal.

2B) That the plaintiff has filed the present suit only in her name. She has not mentioned anywhere in the plaint that she is representing Mr. Harsh Kumar Aggarwal who is also one of the owners of the property and that she is filing the present suit on and behalf of the other owner also. The plaintiff has rather tried to put forth in the plaint that she is the absolute owner of the property. The fact that Mr. Harsh Kumar Aggarwal is also the owner of the property is evident from the lease agreement dated 1/8/1993 wherein it has been explicitly mentioned that the lessors are the joint owners and accordingly Mr. Harsh Kumar Aggarwal entered into the agreement for leasing the property with the defendant and also that the understanding permitting the defendant to continue in the property was made between him.

2C) That the plaintiff has no independent and absolute right to file the suit for possession of the plaint schedule property as she was not entrusted by Mr. Harsh Kumar Aggarwal to represent him. The plaintiff is filing the present suit without also disclosing the fact the whether the said Mr. Harsh Kumar Aggarwal has authorised her

to represent him in the present proceedings. The plaintiff is trying to take away the right of Mr. Harsh Kumar Aggarwal by trying to dispossess the defendant and thereby take away the right of the other co-owner too and enjoy alone. The plaintiff as such has no right to claim for possession of the property or seek any orders against the defendants.

2D) That the plaintiff has no right to claim possession of the plaint schedule property from the defendants as the plaintiff has by herself only an occupier to the premises as she has violated the terms and conditions of the lease by which the suit property was entrusted to her and by virtue of the same the lease deed executed by the Delhi Improvement Trust with the plaintiff has become void. What appears from the lease deed dated 12.6.1952 filed by the plaintiff before this court along with the plaint is that the plaint schedule property has been leased with certain terms and conditions. One of the conditions in the lease deed is that the plaint schedule property and the buildings erected thereon during the term of the lease is not to be used for any other purpose as specified in the schedule II without the consent in writing of the said lessor; further that the condition was that the consent was to first obtained to sub-divide the said land or to part with the possession or transfer or sub-lease a part only of the said land.

2E) That plaintiff has not taken the consent of the lessor for sub-leasing the property to the defendant. The plaintiff has not produced any document before the Hon'ble Court which would show that she has taken the consent of the Delhi Improvement Trust for sub-leasing the property to third parties. By virtue of not taking the prior consent of the lessor by the plaintiff for sub-leasing the property the lease agreement dated 12.6.1952 has become void. The plaintiff is only a trespasser and has no right to claim possession of the plaint schedule property from the defendant. The plaintiff cannot be permitted to take advantage of her own deficiencies and claim title to the plaint schedule property. The defendant has been in possession of the plaint schedule property since 1993 and is still in possession till date."

7. It is contended by learned counsel for the petitioner that lease agreement contained both the names of respondent and her son Sh. Harsh Aggarwal, as the owners of the property. The petitioner is only trying to bring this fact on record.

8. Another contention is that no withdrawal of admission has been done in the present case by filing application for amendment. Rather the proposed amendments are intended only to give support to the defence already taken. By taking such additional defence, petitioner is bringing out the true set of the facts which were not projected by the respondent. Thus, the proposed amendments are required for proper adjudication of the disputes and to avoid further litigation.

9. In support of its contentions, learned counsel cited ***Sushil Kumar Jain v. Manoj Kumar & Anr., 2009 (7) SCALE 103***, in which it was observed;

“the admission made by a defendant in his written statement can be explained by filing the application for amendment of the same. This principle has been settled by this Court in ***Panchdeo Narain Srivastava vs. K. Jyoti Sahay AIR 1983 SC 462***, while considering this issue, held that the admission made by a party may be withdrawn or may be explained. It was observed in paragraph 3 of the said decision as follows:-

“An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment, an admission of fact cannot be withdrawn....”

10. As per lease deed dated 1<sup>st</sup> August, 1993, it was between Mrs. S.K. Aggarwal W/o. Sh. L.S. Aggarwal and Mr. Harsh Kumar Agarwal S/o. Sh. L.S. Agarwal, owners of the building known as Shyam Bhawan and situated at 15/1, Asaf Ali Road, New Delhi, the lessor, and petitioner. However, this lease deed

was signed only by respondent and not by Harish Kr. Agarwal. Thus, it was executed between respondent alone and the petitioner.

11. As already stated above, petitioner in its written statement has not denied at all that respondent is not the absolute owner and landlady of the property in question. Now, it does not lie in the mouth of petitioner to take a different stand. Petitioner himself admits in the written statement that relation between petitioner and respondent are governed by the lease deed dated 1<sup>st</sup> August, 1993. Mere fact that there is mention of Harish Kr. Agarwal in the lease deed as owner will not have any bearing on the facts of this case as the suit property was let out to the petitioner only by respondent.

12. In *Andhra Bank v. ABN Amro Bank*, (2007) 6 SCC 167, the Court observed;

“It is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties.”

13. In *Transmarine Corporation and Ors. v. Zensar Technologies Ltd. and Ors.*, 2009 (12) SCALE 125, the Supreme Court again observed;

“Having considered the nature of the suit which is simply a suit for eviction and also repeated rejection of the application for amendment of the written statement by the courts below, the High Court although had not allowed the writ petition, but at the same time, directed the trial court to decide the issue of title, which is not permissible in law in a suit for eviction simplicitor. In our view, in a suit for eviction, if it is not filed on the ground of bonafide requirement of the landlords and since the respondents have already admitted the relationship of landlord and tenant between the parties,

there was no necessity for the High Court to direct that the issue regarding the title of the plaintiff in respect of the suit premises should be decided in accordance with law and also on the evidence other than the admission of the respondents. In view of the discussions made hereinabove, we are, therefore, unable to accept this part of the impugned order, particularly in view of the fact that in a suit for eviction in which relationship between the parties has been admitted, it would not be open for the tenant to deny the title of the landlords/appellants. In view of the above, we are, therefore, of the view that the courts below had rightly rejected the application for amendment of the written statement filed by the respondents and at the same time, the High Court was not justified in directing the trial court to decide the issue which involves the title of the plaintiffs/appellants on the basis of evidence other than the admission of the respondents.”

14. The trial court in impugned order held;

“3. It is clear from the contentions of the defendant as made in the written statement that the defendant has made an admission that the defendant is the tenant under the plaintiff in the suit property. By the proposed amendments, the defendant wants to withdraw this admission by taking the plea that as per lease deed dated 01.08.93, Mr. Harsh Kumar Aggarwal is also the joint owner and landlord of the suit property. The plaintiff is not representing Mr. Harsh Kumar Aggarwal and so the plaintiff cannot independently file the present suit as she has not independent right.”

It has been observed by the Hon’ble Supreme Court in AIR 1977 SC 680 as follows;

“It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced

by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.

4. Keeping in view that law laid down by the Supreme Court in the aforesaid judgment and the facts of the case, I am of the opinion that the withdrawal of admission already made in the written statement by the defendant by the proposed amendments would certainly cause serious prejudice to the case of the plaintiff and accordingly such amendments are not allowed. The other proposed amendments sought by the defendant regarding that the plaintiff has violated the terms and conditions of the lease deed by which the suit property was entrusted to her are not necessary for the purpose of determining the real question in controversy between the parties. Accordingly, the application of the defendant U/O 6 Rule 17 CPC is without any merits and it is dismissed.”

15. Since the lease deed has been executed between the petitioner and respondent alone, the proposed amendments are not necessary for deciding the controversies between the parties and as such the case law cited by learned counsel for petitioner is not applicable to the facts of the present case.

16. Thus, there is no illegality, infirmity or irrationality in the impugned order passed by the trial court.

17. Hence, present petition is dismissed.

**+CM No.12028/2010**

18. Dismissed.

19. Copy of this order be sent to the trial court.

**V.B. GUPTA, J.**

16<sup>th</sup> July, 2010/RB