

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: January 02, 2014*

+ **CM(M) 709/2013 & CM No.10807/2013**

DELHI DEVELOPMENT AUTHORITY Petitioner
Through Mr.Arjun Pant, Adv.

versus

MATHURA SINGH Respondent
Through Mr.J.K.Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner (defendant in the suit) has assailed the order dated 15th February, 2013 whereby the application filed by the petitioner under Order VI Rule 17 read with Section 151 CPC seeking amendment of the written statement was dismissed.
2. The brief facts of the case are that the respondent (plaintiff in the suit) filed a suit for permanent injunction against dispossession of the respondent from the suit property without due process of law in May, 1995. The petitioner filed its written statement, raising various objections, in December, 1996.
3. By way of application for amendment, the petitioner submitted that in the written statement the suit property had been inadvertently mentioned to be a part of Khasra No.63, of the revenue estate of Village Patti Hamid Sarai instead of Khasra No.64 of the same revenue estate. Therefore, it sought to

amend para 4 of preliminary objections and para 2 of the reply on merits to this effect. It was also stated in the application that the said amendment will not change the stand of the DDA and was necessary for determining the real questions in controversy between the parties.

4. The contention of the respondent was that the application for amendment filed by the petitioner was an afterthought and an attempt to resile from the admissions after a gap of 16 years. There was no explanation on behalf of the petitioner for seeking the amendment.

5. The learned trial court dismissed the application filed by the petitioner on the reasons given in paras 5 to 7 of the impugned order which read as under:

“5. The only amendment that DDA is seeking is regarding the change of khasra no. from 63 to 64. It is pertinent to appreciate here that DDA filed its WS on 18.12.1996 in which it has admitted that the suit property falls in khasra no.63, which is also the case of the plaintiff. It is settled law that amendment can not be restored to for withdrawing admissions made in the pleadings. Moreover, there is absolutely no mention of what has struck DDA after nearly 16 years to say that the suit property falls in khasra no.64 and an error has been made in the written statement. There is no explanation how DDA has come to this conclusion so as to resile from its earlier stand. It is also relevant to note that P.E has already been closed in the present matter and the application is highly belated.

6. Ld. SLO has drawn attention towards documents filed by DDA which talk about khasra no.64. However, these documents also talk about khasra no.63 and therefore this argument of Ld. SLO does not hold much water.

7. Another contention of Ld. SLO, though not part of the application is that an earlier suit by plaintiff was withdrawn due to technical defect and therefore even DDA should be allowed

to amend the written statement. I am unable to gather any legal force in this contention.”

6. I have heard the learned counsel for the parties and have also gone through the material placed on record and impugned order.

7. The contention of the learned counsel for the petitioner is that the amendments sought by the petitioner should have been allowed as the courts should be liberal while condoning the delay in case of State which depends upon its officials for its actions. He has referred to the case of ***Indian Oil Corporation Limited and Ors. vs. Subrata Borah Chowlek and Ors.***, (2010) 14 SCC 419.

8. On the other hand, it is submitted by the learned counsel for the respondent that the learned trial court rightly dismissed the application filed by the petitioner as the petitioner is trying to resile from its admission after a gap of 16 years in the garb of amendment sought by it.

9. It is not disputed by the learned counsel for the petitioner that the respondent had filed a suit for permanent injunction against the DDA on the ground that respondent is the absolute owner in possession of property No.134-A/1 measuring 380 sq.yards comprised in Khasra No.63 situated within the abadi of Village Begum Pur, New Delhi in the revenue estate of Hauz Rani Patti Hameed Sarai, New Delhi.

10. The suit property is assessed to House Tax in the Municipal Record and the respondent alongwith his family is residing in the same. The petitioner had been telling the respondent to demolish the suit property and dispossess the respondent from the same. As such the suit was filed with a prayer restraining the petitioner, its officials etc. from illegally demolishing the property and dispossessing the respondent from the same without due

process of law and also from interfering in the peaceful possession and enjoyment of the respondent in any manner whatsoever. The suit was filed on 27th May, 1995.

11. The petitioner admittedly had filed its written statement in the year 1996 and had specifically admitted that the suit property falls in Khasra No.63 of the said village and has stated that the land has been transferred to the DDA by the Ministry of Rehabilitation under package deed. In the replication the respondent has denied that the land had been transferred to the DDA by the Ministry of Rehabilitation under package deed. Thereafter, issues were framed in the matter on 1st August, 2001. The respondent had already examined four witnesses and closed his evidence on 21st April, 2011. The witnesses of the respondent were duly cross-examined by the counsel for the DDA on the basis of the fact that the suit land falls in Khasra No.63.

12. It is argued by the learned counsel for the petitioner that the learned Trial Court ought to have allowed the amendment in view of the law laid down by the Supreme Court in *Estralla Rubber vs. Dass Estate (Pvt) Ltd.* (2001) 8 SCC 97 wherein it is held that the amendment of pleading by defendant-held, ought to be allowed where purpose of proposed amendment is to elaborate the defence and take additional pleas in support of the case. Even where there is an indirect admission in the original pleading, it is open to the defendant to explain the same. The delay if any, in making application is not a ground for rejection of the application.

13. Having heard the learned counsel appearing on behalf of both the parties and having gone through the pleadings, I am of the considered view that the situation in the present case is quite different. Otherwise in the normal case, amendment would have been allowed in view of the decision

referred by the petitioner. In the present case, DDA has filed an application for amendment of the written statement after 15 years. It appears from the said application that the DDA tried to change its entire stand about khasra number and is trying to resile from its admission made in the written statement. I do not find any infirmity in the impugned order.

14. The application filed by the petitioner is highly belated and there was no valid explanation for such a long delay. It was filed after the trial had commenced in the matter. No justification or explanation was given by the DDA as to why the same was not filed earlier. The following judgments are necessary to be referred:

- a. ***Kali Charan vs. Ishwar Dass, 2002 (61) DRJ 401 (DB).*** Relevant para 5 reads as under :

“5. Admittedly, by the proposed amendment the defendant wanted to change the plea of admission of the plaintiff's case to a plea of denial completely refuting plaintiff's title to the property. Needless to add that in the earlier written statement, defendant No.1 specifically admitted the plaintiff to be joint owner with him and defendant No.2 of the property and also admitted the fact that the plaintiff along with his family was residing in a part of property No.5362-5364, Laddo Ghati, Pahar Ganj, New Delhi and he (defendant No.1) had been Realizing rent for rest of the property for and on behalf of the plaintiff and defendant No.2 Now by way of amendment defendant No.1 prays that he be permitted to state that the property did not belong either to the plaintiff or defendant No.2 or to their father late Shri Bahgwan Dass, rather defendant, No.1 alone was the exclusive owner having acquired title to the property by way of adverse possession.”

- b. ***Ajit Bali & Ors. vs. Arjun Singh Mansukhani, 2002 (62) DRJ 596.*** Relevant para 11 reads as under :

“11. In the written statement these facts are not specifically dealt with nor are controverted by the applicants/defendants. Therefore, paragraph 7 in which the defendants have taken the plea that the plaintiff or their predecessor-in-interest had no subsisting

right and the suit is barred by time and right to property itself is extinguished are not on the basis of facts which were not in the knowledge of the applicant/defendant at the time of filing of original written statement. Why the same were not controverted. The law regarding amendment is well settled. Once the defendant has taken a stand in the written statement dealing with the averment of the plaintiff, the defendant cannot be permitted to resile from that stand and if proposed amendment is allowed, it will amount to resiling from the stand which the defendant has taken in the original written statement in reply to paragraphs 11 (ii) to (v) of the plaint. The stand of the defendant in the amendment application is totally different and if the amendment is allowed, it will amount to allowing the defendant from resiling from admission made in relation to Para 11 (ii) to (v) of the plaint. In any event of the matter this Court will not go into the merit of the controversy between the parties.”

- c. ***A.K. Gupta & Sons vs. Damodar Valley Corporation***, AIR 1967 SC 96. Relevant para 9 reads as under :

“9. Such a view was taken in *Robinson v. Unicos Property Corporation Ltd.* and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words new case have been understood to mean new set of ideas : *Dornan v. J. W. Ellis and Co. Ltd.* This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.”

- d. ***Heera Lal vs. Kalyan Mal and Others***, (1998) 1 SCC 278. Relevant para reads as under :

“9. Now it is easy to visualize on the facts before this Court in the said case that the defendant did not seek to go behind his admission that there was an agreement of 25th January 1991 between the parties but the nature of agreement was sought to be explained by him by amending the written statement by submitting that it was not agreement of sale as such but it was an agreement for development of land. The facts of the present case are entirely different and consequently the said decision also cannot be of any help for the learned counsel for the respondent. Even that apart, the said decision of two learned judges of this Court runs counter to a decision of a Bench of three learned Judges of this Court in the case of *Modi*

Spinning & Weaving Mills Co. Ltd. & Am. v. Ladha Ram and Co. [1977]1SCR728 . In that case Ray, CJ., speaking for the Bench had to consider the question whether the defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was held that such an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. If such amendments are allowed in the written statement plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. 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 7th April 1967 the plaintiff worked as their stockist-cum-distributor. After three years the defendants by application under Order VI Rule 17 sought amendment of written statement by substituting paragraphs 25 and 26 with a new paragraph in which they took the fresh plea that plaintiff was mercantile agent-cum-purchaser, meaning thereby they sought to go behind their earlier admission that plaintiff was stockist-cum-distributor. Such amendment was rejected by the Trial Court and the said rejection was affirmed by the High Court in revision. The said decision of the High Court was upheld by this Court by observing as aforesaid. This decision of a Bench of three learned Judges of this Court is a clear authority for the proposition that once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. Unfortunately the aforesaid decision of three member Bench of this Court was not brought to the notice of the Bench of two learned judges that decided the case in Akshaya Restaurant (supra). In the latter case it was observed by the Bench of two learned Judges that it was settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. The aforesaid observations in the decision in Akshaya Restaurant (supra) proceed on an assumption that it was the settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. However the aforesaid decision of the three member Bench of this Court in Modi Spinning (supra) is to the effect that while granting such amendments to written

statements no inconsistent or alternative plea can be allowed which would displace the plaintiffs case and cause him irretrievable prejudice.”

15. In view of the settled law on the subject, it is clear that after such a long delay of more than 15 years, a party cannot be allowed to amend the pleadings when the Court found that it was an afterthought and there is no justification or explanation given, and when the trial in the matter has already been commenced. Such an amendment is not permissible under the provisions of Order 6 rule 17 CPC also.

16. The application under Order 6 Rule 17 CPC for amendment of written statement filed by the DDA has rightly been rejected by the learned Trial Court.

17. The present petition and pending application are accordingly dismissed.

18. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 02, 2014