

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.26/2024**

Sri Bikash Saha & another

..... Petitioner(s).

V E R S U S

Sri Utpal Baidya

.....Respondent(s).

For Petitioner(s) : Mr. A. Sengupta, Advocate.

For Respondent(s) : Mr. R.G. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

12/07/2024

Heard Mr. A. Sengupta, learned counsel appearing for the defendants/petitioners and Mr. R.G. Chakraborty, learned counsel appearing for the plaintiff/respondent.

2. The suit was instituted by the plaintiff for eviction of the defendants-tenants in respect of the schedule property described in the plaint of Title Suit No.01 of 2023. Written statement was also filed by the defendants contesting the case of the plaintiff vide Annexure-2. Later on, an application under Order VI Rule 17 of the Code of Civil Procedure (CPC, for short) for amendment of the written statement was filed to incorporate the following proposed amendments:

" SCHEDULE OF THE AMENDMENT

(a) At page 9 of the written statement filed by the defendants, in para 17, the following sentences be added;

"The defendants state that on 22.08.2023 and 23.08.2023 they have sent monthly rent of the suit premise amounting to Rs.1,45,000/- to the plaintiff, but it is the misfortune of the defendants that the plaintiff has refused to receive the said monthly rent sent by the defendants through money order."

(b) At page 9 in para 8 after (iii) the following sentences be added:

"iv. Money order slip dated 22.08.2023 (6 sheets).

v. Money order slip dated 23.08.2023 (2 sheets)."

3. This proposed amendment has been denied by the learned Civil Judge (Sr. Division), Court No.1, South Tripura, Belonia vide order dated 19.03.2024 on the ground that these facts referred to in the proposed amendment of sending monthly rent of the suit premises by the defendants to the plaintiff took place after institution of the suit, and thus, it is not due to illiteracy and ignorance of law that the defendants omitted to communicate the said facts to their legal advisor or the legal advisor was unaware at the initial level of the suit and came to know of its importance as the case proceeds. As such, the prayer was rejected.

4. The written statement was filed on 18.03.2023. The proposed amendments relate to sending of monthly rent on 22.08.2023 and 23.08.2023 amounting to Rs.1,45,000/- to the plaintiff which, according to the defendants, he refused to receive. Both the money order slips of the above dates were also sought to be incorporated. Being aggrieved, petitioners are before this Court under Article 227 of the Constitution of India.

5. Learned counsel for the petitioners submits that these proposed amendments are not going to materially prejudice the cause of action raised by the plaintiff at the time of institution of the suit. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of the claim which applies to amendments of plaints are not equally applicable in respect of amendments relating to written statement. Therefore, addition of a new ground of defence or substituting or altering a defence by taking inconsistent pleas in the written statement could not be objectionable whereas adding or altering or substituting a new cause of action in the plaint may be objectionable. It is submitted that in

the case of amendment of a written statement, the Courts have been more liberal in allowing amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case. He has placed reliance upon the decision of the Apex Court in the case of *Usha Balashaheb Swami & others vrs. Kiran Appaso Swami & others* reported in (2007) 5 SCC 602 and also in the case of *B.K. Narayana Pillai vrs. Parameswaran Pillai & another* reported in (2000) 1 SCC 712. He has also placed reliance upon a judgment of the learned Single Bench of the Delhi High Court in the case of *M/S Parsvnath Developers Ltd. Vrs. Ghanshyam Das Agrawal* reported in 2009 156 DLT 218 on this proposition.

6. Learned counsel for the plaintiff/respondent has opposed the prayer. He submits that after filing of the written statement, such subsequent events should not be allowed to be incorporated in the written statement as it would amount to improving the case of the defendants on the basis of subsequent events. The cause of action raised in the plaint are determinable on the basis of the pleadings made by the plaintiff and the written statement filed by the defendants containing their admission or denial on specific averments. As such, this amendment has rightly been refused.

7. I have considered the submissions of learned counsel for the parties and taken note of the material facts placed from the pleadings on record. I have also gone through the impugned order.

8. The difference in principles as relating to amendment in respect of plaint and written statement have been laid down by the Apex Court from time

to time and are also reiterated in the case of *Usha Balashaheb Swami* (supra).

Paragraphs-18 to 22 thereof are extracted hereunder:

"18. It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* [(1920-21) 48 IA 214 : AIR 1922 PC 249] may be taken note of. The Privy Council observed: (IA pp. 216-17)

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed *and should always be liberally exercised*, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."

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.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see *B.K. Narayana Pillai v. Parameswaran Pillai* [(2000) 1 SCC 712] and *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498]). Even the decision relied on by the plaintiff in *Modi Spg.* [(1976) 4 SCC 320] clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in *Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary* [1995 Supp (3) SCC 179] . In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in *Basavan Jaggu Dhobi case* [1995 Supp (3) SCC 179] as follows: (SCC p. 180, para 3)

"3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his written statement under Order 6 Rule 17 CPC by taking a contrary stand than what was stated originally in the written statement. This is opposed to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

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 *L.J. Leach & Co. Ltd. v. Jardine Skinner & 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."

9. Evidently, the principles relating to amendment of written statement are on a different footing. Defendants have by the proposed amendment sought to incorporate certain facts relating to deposit of rent by money orders dated 22.08.2023 and 23.08.2023 which relate to the period when the cause of action had arisen and also subsequent to filing of the suit. The proposed amendments thus are not subsequent events in its true colour and nature as they relate to the period before institution of the suit and the cause of action which had arisen in favour of the plaintiff. By the proposed amendment the defendant has tried to create an impression that the plaintiff had been refusing rents and thus such arrear rents have been paid through money order on 22.08.2023 and 23.08.2023. The statements made in para 17 of the written statement on the other hand indicate that the defendant after receipt of summons for the first time had sent Rs.10,000/- by money order which was 'refused'. Plaintiff has set up a case of default rent for a period of last 24 months at the agreed monthly rent of Rs. 2150/- p.m. The learned trial Court was, therefore, right in its finding that it is not correct that the defendants omitted to communicate the said fact to their legal advisor or the legal advisor

was aware of these facts at the initial level of the suit. The defendants have by proposing to amend the written statement tried to materially alter the case pleaded in its written statement and improve upon it by resorting to incorporate these amendments showing deposit of monthly rent 5(five) months after the period of cause of action and thereafter and show that plaintiff after the filing of the written statement had been refusing rent earlier and therefore he has sent it through money order. It is not that these monthly rents sent through money order on 22.08.2023 and 23.08.2023 relate to a period post filing of the written statement which could be truly subsequent events which may have been required to be brought on record as they could not be incorporated in the written statement. Therefore, applying the principles for amendment of the written statement, this Court is of the opinion that such amendments if allowed to be added in the written statement would definitely prejudice the plaintiff which cannot be compensation in monetary terms.

10. As such, the approach of the learned trial Court does not suffer from any error of jurisdiction. Accordingly, this Court is not inclined to interfere in the matter. The instant revision petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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