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

\+   **CM(M) 37/2015 & CMs 778/2015 & 2698/2015 (stay)**

%   Reserved on: 15th April, 2015
                                                     Decided on: 21st April, 2015

SATISH KUMAR & ANR. ..... Petitioners
Through: Mr. Manish Vats & Mr. P.S. Vats, Advs.

versus

TELU RAM ..... Respondent
Through: Mr. Rajiv Kanwar, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order 15th October, 2014 whereby the application filed by the petitioners Satish Kumar and Sushil Kumar sons of the respondent Telu Ram under Order 6 Rule 17 CPC seeking amendment in the written statement was dismissed, the petitioners Satish and Sushil have filed the present petition.

2. A suit was filed by Telu Ram against his two sons Satish and Sushil stating that he was a senior citizen and sole, exclusive and absolute owner of property bearing No. S-2/128, Swarn Park Extn., Mundka, Delhi-110041 (in short the suit property) which was purchased by him from its previous owner Deeg Ram S/o Nathwa for a valuable consideration by virtue of sale document dated 21st May, 1985. At the time of purchase of property it was an open plot and was bearing No. 9 out of khasra No. 78/20. Later on it was given the number as noted above. Telu Ram from his exclusive funds and

resources raised construction on the ground and first floor which comprises of three bed rooms, verandah, latrine, bathroom and kitchen on each floor. An electrical connection was installed in the name of Telu Ram's wife at the suit property. Besides Satish and Sushil, Telu Ram has one more son who was residing at the native place in the property of Telu Ram. After Telu Ram solemnized the marriage of his sons Satish and Sushil and permitted them to use and occupy the suit property on the ground floor without payment of any license fee, they and their wives and children became disobedient and started mal-treating Telu Ram. Ultimately Telu Ram and his wife were thrown out of the suit property in the month of January 2013. Satish and Sushil inducted defendants No.3 to 5 as tenants in respect to various portions of the suit property. Telu Ram filed a petition under Sections 4, 5, 22 and 23 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the Senior Citizens Act) wherein a decree was passed in his favour and he was put back in possession of one room, kitchen, common latrine and bathroom on the first floor of the suit property. Besides Satish and Sushil were directed to pay maintenance to Telu Ram. Maintenance was also directed to be paid to Telu Ram by his son who was residing in the native village. Satish and Sushil were in occupation and possession of one room each covered verandah, common kitchen, latrine and bathroom in the suit property merely as licensee without payment of any license fee and Telu Ram was no more interested in continuing the license of Satish and Sushil in the aforesaid portion of the suit property. In case Telu Ram lets out the property he would easily fetch good rental income and thus a prayer was made for a decree of possession, damages, mesne profit and mandatory and permanent injunction.

3. Satish and Sushil filed a common written statement stating that they raised the construction over the suit property in the year 1998 from their own funds, earnings and resources and constructed one more room set in the year 2006, again re-constructed the second floor in the year 2010. In the said construction Satish and Sushil have spent ₹12 lakhs from their own funds and with the help of their in-laws and neither Telu Ram nor their younger brother Sanjay has any contribution in the construction of the suit property. At the relevant time Telu Ram was residing at Karnal. In November 2012 the younger brother Sanjay got married and all the expenses of marriage were borne by Satish and Sushil and it was agreed that in case they bear all the expenses Telu Ram will return the title documents and execute a memorandum of family settlement accordingly, however he did not fulfill the promise. In February/March 2013 Sanjay and his wife quarrelled over share in the suit property and under their influence the present suit was filed by Telu Ram which was contrary to the terms of family settlement-cum-agreement dated 10th March, 2013. As per the settlement Satish and Sushil were to pay a sum of ₹10 lakhs to Telu Ram in installments where after Satish and Sushil would become the exclusive owners of the suit property with Telu Ram or Sanjay having no right, title or interest in the suit property. Satish and Sushil have paid the amount of ₹3 lakhs in cash on 15th August, 2003 in the presence of one Mahavir Saini. In order to extract money and under the pressure of Sanjay, Telu Ram filed the petition under the Senior Citizen Act, 2007 as stated above and was handed over peaceful possession of one room set. It is further stated that Satish and Sushil are willing to pay the balance amount of ₹7 lakhs as per the family settlement and hence the suit was liable to be dismissed. In the reply to the merits, the fact that the

suit property was purchased by Telu Ram from Deeg Ram by virtue of sale document dated 21st May, 1985was admitted but it was stated that the same was from family funds and the construction over the suit property was made from the funds and resources of Satish and Sushil.

4. After filing the written statement on 5th July, 2014 Satish and Sushil moved an application under Order 6 Rule 17 CPC seeking amendment of the written statement. It is stated that Satish and Sushil did not know about the death of Deeg Ram S/o Nathwa from whom Telu Ram allegedly purchased the land in question through alleged agreement to sell, GPA, affidavit and receipt dated 19th May, 1986. In the evening of the last date of hearing one Mahavir Singh witness to family settlement dated 10th March, 2013 and Satish great grand-son of Nathwa revealed that Deeg Ram S/o Nathwa died in the year 1986 itself. The suit property S-2/128 does not fall in khasra No. 78/20 revenue estate of village Mundka and Deeg Ram was not the owner of the land in question. Thus Para No. 2(viii) by way of preliminary objection was sought to be added. It was further sought to be added that Telu Ram has sold the suit property through various documents in favour of his wife Darshna who got the electricity connection. Darshana was now threatening the tenant and Satish and Sushil for admitting her to be owner and paying rent to her. The plea that in view of agreement to sell, GPA, affidavit and receipt no title was conferred on Telu Ram is also sought to be added. It is proposed to be amended that the contents of Para 1 of the plaint are not admitted to the extent that the land of suit property was purchased by Telu Ram from Deeg Ram by virtue of sale agreement dated 21st May, 1985.

5. Vide the impugned order the learned Trial Court dismissed the application for the reason that Satish and Sushil were trying to change the

very nature of defence putforth by them in their original written statement and withdrawing admissions.

6. Learned counsel for the Satish and Sushil states that the amendments are necessitated as the petitioners came to know about the fraud committed on them as the respondent/plaintiff concealed material facts. Relying upon *United India Insurance Company Limited Vs. Rajinder Singh and Ors. 2000 (3) SCC 581* it is stated that the Court has inherent powers to recall orders obtained by fraud or misrepresentation. Referring to *Chander Perkash Vs. Om Perkash 1984 RLR 657* it is urged that the principles seeking amendment of the plaint and written statement are not alike. Though the plaintiff cannot set up a new case, however the defendant may be allowed to withdraw an admission or explain the same by amending the written statement. Referring to *Kulvinder Singh Vs. Harvinder Pal Singh & Anr. 192 (2012) DLT 1* it is alleged that the principles to be applied for amendment of the written statement should be much more liberal as compared to principles relating to amendment of the plaint. It is permissible for defendant to take inconsistent pleas, mutually contrary pleas or to substitute original plea taken in the written statement.

7. Learned counsel for Telu Ram on the other hand contends that after he filed an application under Order 12 Rule 6 CPC in view of the admissions made in the written statement, Satish and Sushil filed the present application under Order 6 Rule 17 CPC seeking amendment of the written statement. Even if the rules for amendment of the written statement may be liberal, however admissions cannot be permitted to be withdrawn and a new case set up.

8. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons & Ors. (2009) 10 SCC 84* the Supreme Court laid down basic principles to be taken into consideration while allowing or rejecting an application amendment.

> *"Factors to be taken into consideration while dealing with applications for amendments*
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> 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:
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> (*1*) whether the amendment sought is imperative for proper and effective adjudication of the case;
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> (*2*) whether the application for amendment is bona fide or mala fide;
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> (*3*) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
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> (*4*) refusing amendment would in fact lead to injustice or lead to multiple litigation;
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> (*5*) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
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> (*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."

9. Further, in *M/s. Modi Spinning & Weaving Mills Co. Ltd. and Anr. Vs. M/s. Ladha Ram & Co. (1976) 4 SCC 320* the Supreme Court clarified that though inconsistent and alternate pleas can be taken, however no admissions can be withdrawn. It was held that the defendants cannot be allowed to change the case in the written statement and substitute an entirely different and new case.

10. In *United India Insurance (supra*) relied upon by the learned counsel for the petitioner, the Supreme Court was dealing with the inherent powers to undo an award obtained by fraud and misrepresentation. The said decision has no application to the facts of the present case. In *Kulvinder Singh (supra*) this Court noted the settled principle with regard to liberal approach in seeking amendment of written statement and that the same stands on a different footing from the amendment of the plaint. It also noted that by way of amendment written statement cannot be permitted to be materially altered. This decision did not hold that an admission made in the written statement can be withdrawn by way of amendment.

11. The amendments sought as mentioned above seek to withdraw the admissions made and set up a new case. The present is not a case of taking contradictory pleas but withdrawing admissions and setting up a totally new case.

12. Consequently, I find no merit in the petition. Petition and applications are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 21, 2015
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