

CIVIL REVISION PETITION No. 554 OF 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 28-10-2015 passed in I.A.No. 279 of 2015 in O.S.No. 18 of 2013 on the file of the Court of Senior Civil Judge, Bodhan (for short, 'the trial Court').

The petitioner filed petition under Order VI Rule 17 of the Code of Civil Procedure (for short, 'C.P.C.') seeking permission to amend the written statement contending that one Naymathullah Khan is the owner of the property but not the respondent. The said fact came to his notice when he obtained ownership certificate from Municipal Council, Bodhan, and that no prejudice will be caused in case the written statement is permitted to be amended.

The respondent filed counter before the trial Court resisting the claim of the petitioner on the ground that the petitioner, having been admitted about ownership of the respondent, is not entitled to take away the admission; amendment cannot be permitted after commencement of trial in view of the proviso to Order VI Rule 17 of C.P.C. as amended in 2002; and prayed for dismissal of the petition.

The trial Court, placing reliance on ***B,K.Narayana Pillai Vs. Pararneswaran Pillai and another***^[1], dismissed the petition.

Learned counsel for the petitioner contended that; amendment can be allowed even after commencement of trial if the petitioner is able to prove that, despite exercise of due diligence, he could not take steps to bring new pleas by way of amendment; bar under the proviso to Order VI Rule 17 of C.P.C. has no direct interdict against amendment of pleadings; amendment of written statement is on different footing than amendment of plaint; and normally written statement can be permitted to be amended since pleas raised in the written statement can be decided only after commencement of trial. Learned counsel placed reliance on ***Baldev Singh and others Vs. Manohar Singh and another***^[2]; and ***Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others***^[3]. On the strength of the principles laid down in the above judgments, learned counsel for the petitioner requested to set aside the order under challenge allowing him to amend the written statement.

Learned counsel for the respondent reiterated the contention that plea of the petitioner is self destructive and it would take away the valuable right

that accrued to the respondent since the petitioner admitted relationship of tenant and landlord between them and also admitted ownership in the written statement originally filed by him. If for any reason amendment is allowed denying title of the respondent, it is nothing but permitting the petitioner to take inconsistent pleas and such pleas cannot be permitted. Learned counsel placed reliance on **S.K.Sarma Vs. Mahesh Kumar Verma**^[4] and prayed to dismiss the petition.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

"Whether the petitioner be permitted to amend the written statement raising a plea that the respondent is not the owner and one Naymathullah Khan is the owner of the property?"

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In Re. Point:

Undisputedly, the respondent filed suit for eviction based on agreement of tenancy between him and the petitioner. In the written statement, the petitioner admitted that he obtained the premises on lease to run a super market agreeing to pay monthly rent under oral lease for the period from 01-09-2003 to 30-08-2006 with a condition to extend the lease with the consent of each other from time to time. Thus, the petitioner admitted the relationship of landlord and tenant between the respondent and him. Suddenly, the petitioner raised a specific contention that one Niyamathulla Khana is the owner of the property and the respondent is not entitled to evict him. The said information came to his notice only when he obtained ownership certificate from Bodhan Municipality. No doubt the proposed defence, by way of amendment, is contrary to the plea raised in para No. 3 of the original written statement. However, the petitioner is entitled to raise inconsistent pleas as per settled law.

In **Usha Balashaheb Swami** (3rd *supra*), the Supreme Court relied on **B,K.Narayana Pillai** (1st *supra*) to hold 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 applied to amendments to plaint. It has no counterpart in the principle 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. 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 later case."

A similar view was expressed by the Apex Court in **Baldev Singh and others** (3rd *supra*). In view of the parallel decision of the Apex Court, it is clear that amendment of written statement can be allowed liberally since question of prejudice is far less when compared to amendment of plaint.

Learned counsel for the respondent mostly relied on the principle laid down in **S.K.Sarma Vs. Mahesh Kumar Verma** ^[5], wherein the Supreme Court held that

"Section 116 of the Evidence Act, 1872, puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are 'at the beginning the tenancy'. So a tenant once inducted as a tenant by a landlord, later cannot deny his landlord's title. However, defective the title of such landlord may be, such tenant cannot deny his title."

At best, this principle interdicts tenant to deny title of landlord but that itself is not a ground to raise inconsistent plea in written statement since inconsistent pleas are permissible in view of the principle laid down in **Usha Balashaheb Swami** (3rd *supra*).

In **G.Ravinder Rao and others Vs. Wonderla Holidays (Private) Limited, Hyderabad** ^[6], this Court held that

"Courts have wide discretion under Order VI Rule 17 C.P.C. to allow amendment of pleadings at pre-trial stage even permitting to raise inconsistent pleas which do not displace admissions already made."

In the facts of the above judgment, the defendant sought permission to amend the written statement raising an inconsistent plea but the petition was dismissed by the trial Court. When the matter reached this Court, this Court allowed the amendment holding that a pre-trial stage amendment can be permitted though the plea is inconsistent.

In **Rameshkumar Agarwal Vs. Rajmala Exports Private Limited and others** ^[7], the Apex Court, relying on **Revajeetu Builders and Developers Vs. Narayanaswamy & Sons and others** ^[8] to decide the scope of proviso to Order VI Rule 17 C.P.C., held as follows:

"On critically analyzing 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:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

- (4) *refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) *whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) *as a general rules, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are illustrative and exhaustive.*

The Apex Court further held that

"Amendment application (to) (sic) be filed immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial Court (sic commenced) despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances."

In view of the principle laid down in the above judgments, Courts have to allow amendments if petitions under Order VI Rule 17 C.P.C. are filed before commencement of trial. If petitions are filed after commencement of trial, petitioner has to show that amendment could not be made in spite of exercising due diligence. Here, the petitioner explained the reason for his failure to raise such plea to amend the written statement. It is the specific case of the petitioner from the beginning that there was tenancy between the petitioner and the respondent but he came to know only on obtaining ownership certificate from Municipal Council that the respondent is not the owner of the property. Thus, question of not exercise of due diligence prior to obtaining ownership certificate from Municipality does not arise. Even otherwise, the present petition is filed immediately after obtaining ownership certificate from the Municipality as he came to know that the respondent was not the owner only on the day when he received ownership certificate.

In ***Majati Subbarao Vs. P.V.K.Krishna Rao (deceased) by L.Rs.***^[9], the Apex Court held that

"When a new ground is taken in re-joinder, an issue was framed by trial Court to the knowledge of opposite party but no objection was raised at that time by the opposite party. In such case, amendment cannot be allowed at appellate stage."

In ***Jagajeevan Panigrahi and others Vs. Gelala Somayya***^[10], this Court held that

"Petitioners cannot seek amendment at a belated state (sic. stage) setting up a claim for possession of suit property for the institution of a fresh suit would be barred by limitation. The amendment cannot be allowed, as it seriously prejudices the respondent and the valuable right accrued to the respondent during the pendency of the suit to raise the plea of adverse possession would be defeated."

No doubt the proposed amendment may change the defence set up by

the defendant and inconsistent to the pleas set up in para 3 of the written statement but such amendment and inconsistent pleas can be permitted to be raised in view of the law declared by the Apex Court in ***Usha Balashaheb Swami*** (3rd *supra*). However, the intention of the legislature in permitting amendments is to shorten the litigation and to avoid multiplicity of proceedings. If such amendment is allowed, no prejudice would be caused and such denial of title will be another ground for the respondent to seek eviction in the original suit if it is permissible in view of the bar under Section 116 of the Indian Evidence Act, 1872.

Taking into consideration all the facts and circumstances of the case and to avoid multiplicity of proceedings without driving both the parties to take steps in different forms, I find that it is a fit case to permit the petitioner to amend the written statement since the trial Court rejected the request of the petitioner only on the ground that the plea of the petitioner and the proposed amendment are inconsistent with the plea raised in para 3 of the written statement but that is not a ground in view of the principle laid down in ***Usha Balashaheb Swami*** (3rd *supra*). Apart from that, the petitioner is able to explain the reason for his failure to raise such plea at the earliest stage and the explanation offered by the petitioner is sufficient to accept exercise of due diligence. Hence, the order of the trial Court is erroneous and the same is liable to be set aside.

In the result, the revision petition is allowed; setting aside the order dated 28-10-2015 passed in I.A.No. 279 of 2015 in O.S.No. 18 of 2013 on the file of the Court of Senior Civil Judge, Bodhan; permitting the petitioner to amend his written statement as prayed for. The observations, if any, made in the earlier paras will have no bearing on the decision of the trial Court and the trial Court is directed to decide the suit based on pleadings and evidence uninfluenced by the order passed by this Court in this revision.

Pending miscellaneous petitions in this revision, if any, shall stand closed in consequence. No order as to costs.

Date: 11-03-2016.
MURTHY, J.

JSK

M.SATYANARAYANA

[\[1\]](#) 2000 (1) SCC 712

[\[2\]](#) (2006) 6 SCC 498

[\[3\]](#) AIR 2007 SC 1663 (1)

[\[4\]](#) AIR 2002 SC 3294

[\[5\]](#) AIR 2002 SC 3294

[\[6\]](#) 2015 (3) ALT 806

[\[7\]](#) 2012 (4) ALT 1 (SC)

[\[8\]](#) 2009 (8) SCJ 401

[\[9\]](#) (1989) 4 SCC 732

[\[10\]](#) 1998 (3) ALT 49