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

+ FAO(OS) 118/2017 and CM No.29903/2017

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Date of decision : 21st August, 2017

PRADEEP MEHRA

..... Appellant

**Through : Mr. Saurabh Prakash and Mr.
Kunal Gosain, Advs.**

versus

BCH ELECTRIC LTD

..... Respondent

**Through : Mr. Rajshekhar Rao,
Ms. Jasleen Oberoi and
Mr. Gauhar Mirza, Advs.**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The short issue to be considered in this matter is, as to whether upon amendment of a plaint to be effected under Order VI Rule 7 of the Code of Civil Procedure, the defendant (respondent before us) in a civil suit has an untrammelled right to bring a written statement and take pleas which were never taken or withdraw admissions made in the written statement which was filed to the plaint before its amendment. This issue is so basic and the answer thereto has to be in the negative.

2. In the present case, the plaintiff (appellant before us), along with two others, had filed CS(OS)No.1856/2015 against the

respondent herein.

3. In these proceedings, the defendants took objection under Order VII Rule 11 of the C.P.C. by way of I.A.No.3600/2016 regarding joinder of the plaintiffs and causes of action. The Id. Single Judge by an order dated 19th September, 2016 permitted the plaintiffs to amend the plaint and directed trifurcation of the suit into three suits with the following directions :

“9. The Court considers it appropriate to permit the Plaintiffs in terms of Order II Rule 8 of the CPC to amend the plaint which in effect would mean trifurcating the present suit into three suits. Consequently, the following directions are issued:

(i) Within a period of eight weeks

(a) An application will be filed seeking to amend the plaint in the present suit so as to re-cast it as a suit by Plaintiff No.1. The reliefs in respect of which court fees has been paid have already been set out in the prayer.

(b) two fresh suits be filed: one, in respect of the claim of Plaintiff No. 2 and another in respect of claim of Plaintiff No.3.

(ii) The Plaintiffs will not be required to pay any separate court fees, since they have already paid the applicable court fee.

(iii) It is made clear that as far as Plaintiff No.3 is concerned, since the claim is Rs.1,81,08,813/-, the fresh suit will be filed before the Court having appropriate jurisdiction, subject to the above condition regarding payment of court fee

(iv) The Defendant is barred from raising the plea of limitation in respect of any of the suits.”

4. The present appellant who was plaintiff no.1 in the original suit filed an amended plaint in purported compliance of the order dated 19th September, 2016. It appears that the respondents objected to the amendments effected by the appellant on the ground that they were beyond the scope of liberty granted by the Id. Single Judge by the order dated 19th September, 2016.

5. In view thereof, the appellant filed amended CS(OS)No.1856/2015 along with I.A.No.13953/2016 under Order VI Rule 17 of the C.P.C. for amendment of the plaint to incorporate the pleas. In reply to I.A.No.13953/2016, the respondent objected to certain paragraphs of the amended plaint, especially to certain portions of paras 8 and 25. This application was allowed by an order dated 14th December, 2016 by the Id. Single Judge subject to filing of the amended plaint by the plaintiff strictly in compliance with the order dated 19th September, 2016. Thereafter the appellant/plaintiff filed a second amended plaint on 19th December, 2016 thereby making changes to paras 5 and 25 and deleting para 8.

6. The respondent herein, filed an amended written statement to the second amended plaint. The plaintiff made objections to the amended written statement by way of I.A.No.2567/2017 under Order VI Rule 16 and Order VIII Rule 1 of the CPC before the Single Bench which application came to be allowed by the impugned order dated 16th March, 2017 and liberty was given to the respondent herein to file the amended written statement.

7. This appeal assails the order dated 16th March, 2017 on the ground that the Id. Single Judge has allowed the amended written

statement filed by the respondent herein to be retained on record to which, as per the memorandum of appeal, the appellant/plaintiff had taken *inter alia* the following objections :

- *A comparison of the said Amended Written Statement with the earlier Written Statement filed by it shows that it is completely different and contains a number of pleadings and objections that it had not raised earlier. It would thus be seen that the earlier Written Statement contained 4 opening paras followed by “PRELIMINARY OBJECTIONS” running into 7 Paras. It thereafter proceeded to make a para-wise reply to the plaint. All of these taken together ended on page 5 of the Written Statement. The entire Written Statement was 19 pages long.*
- *The Amended Written Statement opens with “Preliminary Objections” running into 32 paragraphs which in turn contain several sub-headings and several of the paragraphs also contain sub-paras. All these run into 15 pages. It is only thereafter that it proceeds to make a para-wise reply to the plaint. Even the said para-wise reply is materially different from the para-wise reply in the original Written Statement. The entire Amended Written Statement is 36 pages long.*
- *The earlier Written Statement was filed on behalf of three Defendants in response to the Plaint filed by three Plaintiffs and the Amended Written Statement was filed on behalf of only one Defendant in response to the Plaint filed by only one Plaintiff.*

8. By the impugned order dated 16th March, 2017, which has been challenged before us, the Id. Single Judge rejected the objections of the plaintiff holding as follows :

“10. ... The facts of this case are peculiar in nature in the sense that although the court was of the opinion that the suit

of the plaintiff which was originally filed by three plaintiffs was bad for misjoinder of causes of action in view of Order 7 Rule 11 CPC yet permitted the plaintiffs to file their separate suits. It was result of this direction of the court in its order dated 19.09.2016 that the plaintiff sought amendment and file the fresh amended plaint in its individual capacity deleting the causes of action of the other two plaintiffs. In view of this it cannot be said that the plaint was amended pursuant to Order 6 Rule 17 CPC rather the amended plaint was sought to be filed pursuant to the directions of this court dated 19.09.2016 whereby the plaintiff corrected its original plaint. Also during the course of arguments, the plaintiff except raising the objection that the amended written statement runs into more pages than the original written statement and have more paragraphs and other things, there is nothing which suggests that there is a substantial change in the defence raised by the defendant while filing its written statement to the original plaint. Defendant has also in its reply to the application clearly stated that it has not introduced any new defence in the said written statement. Even otherwise, the plaintiff shall have an opportunity to file its rejoinder wherein it can controvert any of the plea taken by the defendant. In view of this fact, I find no reason to reject the amended written statement. The amended written statement shall continue to be on record. Replication shall be filed within four weeks.”

9. The respondents have thus filed a written statement to the amended plaint to which objections stand taken by the appellant. It is submitted that in the written statement to the amended plaint, the respondents have substantially changed their original defence, withdrawn the admissions made in the written statement which was filed to the original plaint and also incorporated new pleas which were never taken in the written statement filed originally. Before us, the

appellant has placed a tabulation placing the comparison between the written statement originally filed; the stand of the appellant in its replication and the pleas now incorporated in response to the amended plaint. A bare perusal thereof would show that the grievance expressed by the appellant is certainly established from this tabulation.

10. Appearing before us, Mr. Rajshekhar Rao, Id. counsel for the respondent has contested this appeal submitting that the appellant would have an opportunity to meet the submissions made in the written statement in the replication which it would file thereto. It is further contended that no prejudice would result to the appellant inasmuch as the respondent has a legal right to seek incorporation of new pleas by way of amendment of the written statement originally filed.

11. It is trite that upon a plaintiff being permitted to amend the plaint, the written statement thereto has to be confined to the extent which the amendment has been permitted in the plaint and cannot travel beyond that. It is equally well settled that even while considering the application for amendment of a written statement, the court has to carefully ensure that admissions already made are not permitted to be withdrawn.

12. In view thereof, while it would be extremely tempting to accept the submission of Mr. Rajshekhar Rao, Id. counsel for the respondent that proceedings in the suit would get delayed if the respondents were diverted to the requirement to seek permission to amend the written statement to incorporate the pleas which had been taken in the objected written statement, we are of the view that the settled

principles of law and established procedure has to be complied with.

13. In this regard, we may usefully extract the findings of the Full Bench of this court reported at **1999(48) DRJ (FB), Kedar Nath & Ors. vs. Ram Parkash & Ors.** wherein in para 20, the court observed as follows :

“20. None of the decided cases deals with a very important aspect of the procedure. The plaintiff under the Code of Civil Procedure cannot amend the plaint as of right. He must take the leave of the Court. If that be so, an amendment having been allowed, the power has to be left in the hands of the court to decide whether an opportunity or leave for consequential amendment in the written statement would meet the ends of justice or a subsequent additional pleading by the defendant is warranted and hence should be allowed. Ordinarily a plea allowed to be raised in the plaint by way of amendment should be left to be answered by a plea to be raised in the written statement by way of consequential amendment subject to leave of the court. While granting such leave in the light of the averment made in the application seeking such leave, the court would apply its mind whether the pleas raised now or sought to be raised by way of amendment are in lieu of the pleas raised earlier or are in addition thereto. The court would examine whether such pleas sought to be raised by way of amendment in the written statement are in any way inconsistent with the previous pleadings of the defendant. While considering an application for amendment, the court would have jurisdiction to permit an amendment inconsistent with the original pleadings though it will be a matter of discretion to permit or not to permit which discretion will be exercised judicially. Once the court grants leave to amend written statement on an application made to it for the purpose, the amendment so allowed would be incorporated in the written statement as originally filed. A consolidated but only one written statement would come into existence. This would be convenient and avoid confusion at the trial. As is borne out

from the phraseology employed by Rule 9 of Order 8, the rule is not to permit any pleading subsequent to the written statement of a defendant. Jurisdiction to permit a subsequent pleading is there but that is by way of exception and exercisable subject to the leave of the Court being asked for which may be allowed upon such terms as the court thinks fit. An additional pleading cannot be inconsistent with the previous pleading of the party filing the same.”

(Emphasis by us)

14. Even though, wider discretion is conferred on a court to permit amendment of a written statement than while considering a prayer for amendment of a plaint, it is well settled that this is not an absolute right. The proposed amendment must bear the scrutiny of the court.

15. We find that the impugned order dated 16th March, 2017 fails to take into consideration these well settled principles and cannot be sustained.

16. In view of the above discussion, the order dated 16th March, 2017 is hereby set aside and quashed.

17. It is directed as follows :

(i) The written statement dated 20th January, 2017 filed by the defendants be struck-off the record. The respondent is permitted to file its written statement in consonance with the above well settled principles within a period of four weeks from today with original documents in support thereof in accordance with law.

(ii) The appellant is permitted to file his replication with any additional documents within a period of four weeks thereafter.

(iii) The parties shall conduct admission/denial of documents of the other side on affidavit which shall be filed along with their respective

pleadings.

(iv) The matter being CS(OS)No.1856/2015 shall be listed before the Joint Registrar (Judicial) on 2nd November, 2017 for marking exhibits and be listed before court for framing of issues on 4th December, 2017.

(v) The appeal is disposed of in the above terms.

CM No.29903/2017

18. In view of the order passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 21, 2017

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