

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3864 OF 2017

Mr. Dheeraj R. Shrivastav .. Petitioner
vs.
Kannayalal N. Meghranjani and ors. .. Respondents

Mr. A.M. Kulkarni I/b Mr. A.P. Shinde for the Petitioner.
Mr. G.R. Agrawal for Respondent Nos.1 to 6.

CORAM : M. S. SONAK, J.
DATE : 14 DECEMBER 2018.

ORAL JUDGMENT :-

1] Heard Mr. Kulkarni, learned counsel for the petitioner and Mr. Agrawal, learned counsel for respondent Nos.1 to 6.

2] Mr. Kulkarni, learned counsel for the petitioner, seeks leave to delete respondent Nos.7 and 8 stating that their presence is not necessary for the purposes of deciding the issues raised in the present petition since they are the original co-defendants along with the petitioner. Deletion is permitted. Amendment to be carried out forthwith.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in this petition is to the orders dated 19th June 2012 and 4th March 2017 made by the Trial Court and the Revisional Court declining leave to the petitioner (original defendant No.3) to amend the written statement.

5] Mr. Kulkarni submits that this was a case of a pre-trial amendment. He submits that this was a case of leave to amend the written statement. Therefore, for both these reasons, the issue of grant or refusal of leave ought to have been considered liberally. He submits that if the original written statement and the proposed written statement are perused, then it is clear that the petitioners had neither made any admissions nor was this a case of withdrawal of this admission. He submits that this was a case of elaboration of the previous pleadings. Accordingly, he submits that the impugned orders warrant interference.

6] Mr. Agarwal, learned counsel for the respondents (original plaintiffs), submits that this was clearly a case of withdrawal of admissions and this is evident upon comparison of the averments in the original written

statement and the amendments which are proposed to be carried out of this original written statement. Mr. Agarwal submits that the petitioner seek to delete certain averments constituted admissions. He submits that this is clearly impermissible under Order 6 Rule 17 of CPC. He, therefore, submits that there is no jurisdictional error in the view taken by the two Courts so as to warrant any interference under Article 227 of the Constitution of India.

7] The rival contentions now fall for determination.

8] Admittedly, this was a case of pre-trial leave to amend written statement, therefore, the application for such leave was required to be considered liberally.

9] One of the principle for which leave to amend may be declined is whether a party seeks to withdraw admissions in pleadings. However, for this purpose, it has to be established that the admissions themselves were clear and unambiguous. Further, though leave may not be ordinarily granted to withdraw admissions in pleadings leave can

always granted to explain such admissions or import of such admissions. The issue of leave to amend the written statement in the present petition will therefore, have to be considered in the light of these principles.

10] In paragraph 2 of the plaint, this is what the plaintiff had averred:

“2) The suit premises described in Para 1 hereinabove was originally owned by Shri Nandlal Hassanand Meghrajani. Said Nandlal Hassanand Meghrajani let out the suit premises to late Shri Ramnaresh Shrivastav to run the business of electric goods somewhere in the year 1967. Said Nandlal Hassanand Meghrajani expired on 23/08/1997 and the Plaintiffs are his only legal heirs. It is submitted that on death of Shri. Ramnaresh Shrivastav, the Defendants are his only legal heirs to the best of knowledge of these Plaintiffs.”

11] In response to the aforesaid, the petitioner (original defendant No.30 in paragraph 2 of his written statement had responded as follows:

“2) The contents of the plaint which is specifically admitted by the defendants except that, rest of all the contents of the plaint are not admitted and denied by the defendant No.3. The content that the above described property was owned by the Mr. Nandlal Hassanand Meghrajani is not true and correct. The said property is owned by the Government but Mr. Nandlal was only the occupier it is true that the said shop was given to the defendant to run the business of electric goods. The

defendant is not aware regarding the date of death of Mr.Nandlal. The present plaintiff are only the legal heirs of Mr. Nandlal. It is also true that the defendants are the heirs of Ram Naresh Shrivastav.”

12] From the aforesaid, it is quite clear that the petitioner had not accepted that the described property was owned by Nandlal H. Meghrajani. All that was stated in paragraph 2 was that a property is owned by the Government but Mr.Nandlal was to only occupy.

13] Now, the petitioner, seeks to substitute original paragraph 2 by the following paragraph :

“2. As regards Para 2 of the plaint it is specifically denied by the defendant no.3 that the suit premises described in Para 1 was originally owned by Shri Nandlal Hasanand Meghrajani and said Nandlal Hassanand Meghrajani let out the suit premises to late Shri. Ramanaresh Shrivastav to run the business of electric goods somewhere in the year 1967. That the defendant no.3 do not have knowledge about death of the said Nandlal Hassanand Meghrajani and whether the Plaintiffs are his only legal heirs. It is also specifically denied that on the death of shri Ramnaresh Shrivastav the defendants are the only legal heirs. The defendant no.-3 also has a sister married around 12-13 years back naming Mrs. Neeta Ravi Shrivastav who is also a legal heir of late Shri Ramnaresh Shrivastav.”

14] Again, from the perusal of the aforesaid proposed amendment, it is clear that the petitioner only reiterates his earlier contention that Shri. Nandlal H. Meghrajani was not owner of the suit premises described in paragraph 1 of the plaint. Therefore, upon a wholistic reading of the earlier pleadings and the proposed pleadings it cannot be said that this was a case where the petitioner sought to withdraw any clear and unambiguous admissions in the original pleadings. At the highest, this was a case of elaboration of the previous pleadings or explanation of the so called admissions in the previous pleadings.

15] The same is the position as regards the pleadings in paragraphs 3 and 4 of the original written statement and the proposed amendment.

16] In paragraphs 3 and 4 of the original written statement, the following averments were made by the petitioner (defendant No.3) :

“3. The contents of the Para No.3 that the said premises was given to run the electricity goods business is true. But the rent of the said premises was Rs.2000/- per month is not true and correct. That the present

defendant stated that the rent of the shop was Rs.100/- per month.

4) The contents of the para No.4 is not true and correct and denied toto. The defendants submit that they were regularly paying the rent to Mr. Nandlal during his life time. But there after the defendant was paying rent to the legal heirs of the Mr. Nandlal but the legal heirs were not issuing the rent receipt to the defendant. The defendant denied the contents that the defendants were not regularly paying the rent to the plaintiffs. The defendants were paying the rents but the plaintiff refuse to accept the same. The defendants had send the rent to the plaintiff through the money order but they refuse to accept the same. The contents of the plaintiff are not true and correct, that the defendants were not ready and willing to pay the rent to the plaintiff.”

17] Now by way of amendment, the petitioner seeks to replace original paragraph 3 with the following paragraph:

“3] As regards Para 3 of the plaint – It is specifically denied by the defendant no.3 that the month of tenancy of the defendants commenced on first day of Gregorian Calendar and ends on the last day of the said month. It is specifically denied by the defendant no.3 that the current agreed rent of the suit premises is Rs.2000/- per month exclusive of education cess and other cesses. Further it is specifically denied by the defendant no.3 that the said suit premises was let out to run electric goods business only and the defendants have to pay rent of concerned month on or before 5th day of every month in advance.”

18] Similarly, the petitioner, in addition to paragraph 4 in the written statement seeks to add the following (4a):

“4a] As regards Para no-4 of the plaint it is specifically denied by the defendant no.3 that the defendants have not paid the rent from 1/09/1997 to Nandlal Hassanand Meghrajani, during his lifetime and after the death of Nandlal Hassanand Meghrajani, it is also specifically denied by the defendant no.3 that these Plaintiffs have repeatedly called upon the defendants to pay rent regularly and punctually. It is specifically denied by the defendant no.3 that at all times the defendants have refused to pay the rent regularly and punctually and it seems that the defendants do not want to pay the rent. Further it is specifically denied by the defendant no.3 that the defendants were giving evasive and false pretext for not paying the rent and also denied by the defendant no.3 that the defendants are totally negligent in paying the rent so also they are not ready and willing to pay the rent as agreed.”

19] From the perusal of unamended pleadings and the pleadings which are sought to be introduced by way of amendment, it is quite clear this is not a case of withdrawal of admissions as such. Some minor changes here and there or even some major changes here and there do not necessarily amount to withdrawal of admission so as to bar leave to amend.

20] Ultimately, it must be seen that this is a case of pre-trial amendment. Further, this is a case of amendment to the written statement where in a given case, even alternate pleas

can be raised by the defendants.

21] The two Courts have mainly denied leave to amend on the grounds that this is the case of withdrawal of admissions. As noted earlier, this cannot be said to be a case of withdrawal of admissions. Similarly, because amendments may have been sought for in several paragraphs of the written statement is, by itself not a good ground to reject leave to amend.

22] No doubt, on the issue of amendment itself, valuable period of five years has been lapsed, to that extent, the respondents – plaintiffs have certainly been prejudiced. The prejudice in this case, is such as can be compensated by costs. This is therefore, a case where leave to amend can be granted, no doubt subject to payment of substantial costs.

23] Accordingly, the impugned orders are set aside. Leave to amend is granted subject to payment of costs of Rs.50,000/- to the respondent No.1 to 6 (original plaintiffs) within a period of four weeks from today. The payment of

costs shall be a condition precedent. If costs are not paid/deposited within four weeks from today, this petition shall be deemed to have been dismissed without any further reference to this Court.

24] Mr.Agrawal, the learned counsel for respondent Nos.1 to 6, states that the costs may be paid to the respondent No.1, who shall accept the same on his own behalf as well as on behalf of the remaining plaintiffs.

25] It is further made clear that this Court has not adjudicated even remotely on the merits of the rival contentions in the pleadings and therefore, all contentions of all parties are expressly kept open.

26] The Trial Court may permit the amendment to be carried out within two weeks from the date of deposit/payment of costs.

27] The Trial Court is also requested to dispose of the main suit as expeditiously as possible and in any case within a

period of 18 months from today.

28] Rule is made absolute to the aforesaid extent with costs.

29] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)