

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5261 of 2018

Chirayu Jamnadas Bhatia & ors. ... Petitioners

v/s.

M/s. Karsondas Lalbhai Narielwala ... Respondents

Mr.Chirayu J. Bhatia, petitioner-in-person present.
Mr. Amol Joshi for respondent.

CORAM : DAMA SESHADRI NAIDU, J.

10th July 2019.

P.C.

The petitioners are the landlords and the respondent–partnership firm is the tenant. The respondent firm filed 8/SR of 1999 for fixation of the standard rent. The landlords contested that suit. On 22nd February 2011, the Trial Court eventually decreed the suit. On the parallel lines, the landlords also filed R.A.E. Suit No. 705/1282 of 1999 against the tenant firm for eviction, and that suit has still been pending. In that suit, the tenant entered appearance and filed its

written statement.

2. Then in 2015, as the eviction suit was coming up for evidence, the tenant filed a revision application before the Appellate Bench of the Small Causes Court, assailing the judgment, dt.22.02.2011, in 8/SR of 1999. Put plainly, after about four years, the tenant wanted to challenge the order in its application for fixation of fair rent. As there was a delay of 1525 days, the tenant filed a Marji application to have it condoned.

3. When the Marji application was taken up for hearing, the Appellant Bench, it seems, asked the tenant's counsel when the tenant came to know about the decree or the final order in 8/SR/1999. Innocuous as the Appellant Bench's query was, that has engendered another round of litigation, sadly.

4. As the record reveals, the tenant filed Exhibit 13 application under Order 6 Rule 17 to amend the Marji application filed for delay condonation. In that application, the firm's partner Vipul J. Narielwala, who has been at the helm of the affairs of the business, has pleaded that he had not known about the Order, dt.22.02.2011 till recently. He

explained that his father, the principal partner in the firm, had been looking after the case. Later he died. So he has pleaded that he came to know about the final order only when he was instructing his counsel for preparing the defence in the suit for eviction. With that explanation, Vipul wanted to amend the Marji application and plead that there was no delay at all.

5. After considering the rival contentions, the Appellate Bench of the Small Causes Court allowed Exhibit 13 application. That is, the tenant was allowed to amend his Marji Application. Impugning the Appellant Bench's Order, dated 16th February 2018, the landlords have filed this writ petition.

6. Shri Chirayu Jamnadas Bhatia, the 3rd of the five landlord-petitioners, has argued the case in person—and with professional ease, at that. For the tenant-firm, Shri Amol Joshi, the learned advocate has advanced his arguments.

7. Shri Bhatia has submitted that at the landlords' instance, the trial Court fixed the standard rent way back in February 2011. By then, the original tenant, Vipul's father died. To be precise, he died in 2009

—two years before the trial Court disposed of the tenant's application. Thereafter, it is Vipul that pursued the litigation for the tenant-firm. Shri Bhatia stresses that the tenant took a cue from the Appellate Bench's observation during arguments about the alleged date of knowledge; changed its counsel; changed his tac; and set up an entirely new plea. And that plea, Shri Bhatia asserts, allows the tenant to withdraw his admission on the delay. In this context, Shri Bhatia has also drawn my attention to the certified copy of the final order in 8/SR of 1999.

8. To sum up his submissions, Shri Bhatia has submitted that all along either during the pendency of the application for standard rent fixation or thereafter, the tenant has persistently defaulted. Then, after 2004 it paid no rent. Faced with eviction, among other things, on the count of defaulting on rents, the tenant had to introduce its defence in the landlord's suit.

9. To get over this crisis, the tenant wanted to use, according to Shri Bhatia, this devious device of Revision against the final order dated 22nd February 2011, after many years.

10. Thus, Shri Bhatia has contended that no court should allow a party to amend the pleading to withdraw an admission already made or to plead an entirely new case. To support his contentions, he has relied on the Supreme Court's judgments in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*,^[1] and in *M/s. Modi Spinning & Weaving Mills Co. Ltd. v. M/s. Ladha Ram & Co.*^[2]

11. In response, Shri Amol Joshi, the learned counsel for the tenant-respondent, has submitted that the writ petition is premature. According to him, the Appellate Bench has only allowed the tenant to place on record its version about whether there was any delay in its filing the Civil Revision Application. Merely because the Appellate Bench has allowed the application for amendment, it cannot be construed that the Appellant Bench has accepted that there was no delay. Nor have the landlords been deprived of their defence; they still can oppose the Marji application on merits. In this context, he has relied on the Supreme Court's judgment in *Estralla Rubber v. Dass*

1[] AIR 1957 SC 363

2 [] AIR 1977 SC 680

Estate(P) Ltd.^[3].

12. Heard Shri C.J.Bhatia, the petitioner-in-person, and Shri Amol Joshi, the learned Counsel for respondents.

13. Indeed, the Courts have always adopted a liberal approach in allowing parties on either side to amend their pleadings. It is a truism that the procedural law is a handmaid of justice; it has not been designed to trip people up with technicalities. That said, here the case, however, presents an entirely different picture.

14. First, as the Managing Partner of the tenant firm, has admitted in the Marji application a delay of 1525 days. To have that delay condoned, the firm has filed Exhibit 13 application. When the tenant's counsel was arguing this Exhibit 13 application, the Appellate Bench seems to have queried about when the tenant came to know about the final order in the application for standard rent fixation.

15. As I have already noted, it may be a routine query from the Appellate Bench. Yet I must observe that the query is misplaced. To elaborate, I may appreciate that it is not a case of *ex parte* proceedings

where the defendant or the respondent had been imputed with constructive notice and knowledge. It is the tenant that filed the application and pursued it. It was not dismissed for default. On the other hand, it was allowed on the merits.

16. Vipul, the partner has advanced a feeble plea that his father had been looking after the litigation and, because of that, he did not know of the final order in that case. This plea merits no consideration. The Vipul's father died in 2009, but the fair-rent proceedings ended in 2011. By then, Vipul came on record and pursued the litigation. Shri Bhatia has diligently brought to my notice that the respondent firm filed its copy application on 3rd March 2011 and secured the certified copy of the final order on 31st March 2011. A partner's knowledge is the firm's knowledge and vice versa.

17. Yet the tenant contends that the landlords' objection about the amendment application is premature. Is it so?

18. If the amendment application is allowed, what should follow? Initially, the tenant pleaded, with eyes wide open, that there was a delay of 1525 day and that the delay ought to be condoned. Then it applied

to amend the Marji application. That was allowed. Let us see the consequences. The tenant will amend the pleadings in the Marji application—so the delay disappears. Then, the tenant will insist that the Civil Revision Application must be admitted and heard on the merits—for it is deemed to have been filed on time. Let us assume the landlords object to the Appellant Bench's hearing the Civil Revision Application, on the question of delay, but without challenging the amendment.

19. In the above hypothetical, yet probable, context, the tenant's denial will be swift: that when the amendment was allowed, the landlords remained quiet. Now they are estopped from questioning the consequences of an amendment, which was allowed to attain finality. I am afraid the tenant cannot run with the hare and hunt with the hound.

20. Now, let us consider the precedential position on the amendment that allows a party to withdraw an admission or set up a new case. Shri Bhatia has relied on *Pirgonda Hongonda Patil and Ladha Ram*.

21. In *Pirgonda Hongonda Patil*, a three-Judge Bench of the Supreme Court has quoted with approval Batchelor J. in *Kisandas Rupchand v. Rachappa Vithoba*^[4]: "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties..."

22. Let us dwell deeper.

23. In one case, the trial court rejected the defendants' application for amendment. It was on the ground that the defendants wanted to resile from admissions made in the written statement. According to it, the defendants' repudiating their clear admission would deprive the plaintiff of his accrued valuable right, and it is against law. In that context, the Supreme Court's three-Judge Bench, in *Ladha Ram*, has held that though the defendant can take inconsistent or alternative pleas in the pleadings, he should not be permitted to amend the pleadings to "displace the plaintiff completely from the admissions" the defendant made in the written statement. If such

4 [] I.L.R. [1900] Bom. 644

amendments are allowed, according to *Ladha Ram*, the plaintiff will be irretrievably prejudiced “by being denied the opportunity of extracting the admission from the defendants.”

24. But in *Panchdeo Narain Srivastava v. Jyoti Sahay*^[5], a two-Judge Bench of the Supreme Court seemed to have struck a different note. In that case, the respondent’s counsel argued that “by the device of amendment a very important admission is being withdrawn.” Then, without much elaboration, *Panchdeo Narain Srivastava* observes that “an admission made by a party maybe withdrawn or explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.”

25. That said, Section 58 of the Evidence Act mandates that no fact need to be proved in any proceeding if that fact is deemed to have been admitted by a party in his pleadings. Such course must be permissible “by any rule of admission.” In other words, admission is the best of evidence. Of course, the court may, in its discretion, still require the facts admitted to be proved otherwise than by such admission.

26. In *Nagindas Ramdas v. Dalpatram Iccharam alias Brihram*^[6], another three-Judge Bench of the Supreme Court has held that “admissions if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions admissible under Section 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admission.” *Nagindas Ramdas* goes on to observe that admissions in pleadings are binding on the party that makes them and constitute a waiver of proof: “They by themselves can be made the foundation of the rights of the parties.” But *Nagindas Ramdas* puts the evidentiary admissions on a lower pedestal. They are by themselves not conclusive, they can be shown to be wrong.

27. In a suit for declaration of title, the defendant denied the plaintiff's title. Besides that, later through an amendment, he wanted to introduce an alternative plea: limitation. In that context, the Supreme court in *Baldev Singh v. Manohar Singh*^[7], has held that an amendment of a plaint and amendment of a written statement, as is

6 [] AIR 1974 SC 471

7 [] AIR 2006 SC 2832

well settled, are not necessarily governed by the same principle. According to it, the plaintiff cannot be allowed to amend his pleadings to alter materially or substitute his cause of action or the nature of his claim. But this proposition governing the plaintiff “has no counterpart in the law relating to amendment of the written statement.”

28. *Baldev Singh* notes that “adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action.” So in the case of amendment of a written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaintiff and question of prejudice is less likely to operate with the same rigour in the former than in the latter case. Here, in this case, an application by the plaintiff-petitioner stands on the same footing as a plaintiff does.

29. After examining all the above precedents, the Supreme Court in *Steel Authority of India Ltd. v. Union of India*^[8], has held that “by taking recourse to an amendment made in the pleading, the party cannot be permitted to go beyond his admission.”

30. The tenant has relied on *Estralla Rubber*. Let us see what it says. Indeed, in *Estralla Rubber*, the Supreme Court has held that the amendment of pleadings under Order 6 Rule 17, as fairly well settled, is to be allowed if such an amendment is required for proper and effective adjudication of the controversy and to avoid multiplicity of judicial proceedings. It is subject to certain conditions: for example, the amendment should not result in injustice to the other side; it should not allow a party to withdraw a clear admission that conferred certain right on the other party; it should not resurrect a time-barred claim; it should not take away any valuable accrued right to the other party. In other words, an amendment can be allowed if it does not seriously prejudice the opposite party.

31. True, *Estralla Rubber* acknowledges that if the amendment aims at nothing more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation. And, then, *Estralla Rubber* notes the principles that allow an amendment to the plaint equally apply to the amendment of the written statement. The courts are more generous, it

observes, in allowing the defendant to amend the written statement as its prejudicing the plaintiff is less likely, for the defendant may take an alternative plea in defence. Of course, even this concession carries a caution: that with the proposed amendment, the other side should not be subjected to serious injustice and that “any admission made in favour of the plaintiff conferring a right on him is not withdrawn.”

32. I fail to see how *Estralla Rubber* will help the tenant. Now, we will examine the tenant’s plea: that the amendment is clarificatory; it neither introduces a new case nor withdraws any admission. To put this contention in perspective, let us see what the Marji Application sets up and what Exhibit 13 application, under Order 6 Rule 17, clarifies if it were. The Marji application pleads there is a delay of 1525 days in the tenant’s filing the Civil Revision Application. And Exhibit 13 wants to take away that admission, for it pleads there is no delay. So, by any reckoning, Exhibit 13 clarifies nothing; it withdraws what the tenant has pleaded in the Marji Application, and, indeed, sets up the new plea of lack of knowledge about the final order in the fair-rent-fixation application.

33. So, to sum up, liberal as the courts' approach has been in allowing the amendment applications, they have allowed a party to withdraw an admission or to introduce an entirely new case-to the other party's prejudice. Here, the tenant's Exhibit 13 inflicts both hardships on the landlords: that of withdrawing an admission and that of setting up a new case.

I, therefore, allow the writ petition, setting aside the impugned order dated 16th February 2018. The respondent tenant may pursue its unamended Marji application on merits.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.