

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 1599 of 2019

**M/s. Pragati Pratisthan Private Limited
Vs.
Ashok Kumar Agarwal.**

For the Petitioner/Plaintiff : Mr. Krishna Das Podder, Adv.

For the Opposite Party : Mr. R. A. Agarwal, Adv.
Mr. Ananda Gopal Mukherjee, Adv.
Ms. N. Pal, Adv.

Heard On : 13.09.2021.

Judgment : 24.09.2021

Subhasis Dasgupta, J:-

The subject matter of challenge is against the order dated 11th April, 2019 passed by the learned Judge, IVth Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 281 of 2017, allowing amendment of written statement of defendant.

Mr. Krishna Das Podder, learned advocate representing the petitioner/plaintiff, submitted that learned court below had erroneously allowed the prayer for amendment of the written statement, without truly

appreciating the schedule of amendment proposing amendment of written statement as many as three (3) counts, and by reason of such amendment of the written statement being allowed, plaintiff had been irretrievably prejudiced by denying him the opportunity of extracting the admission from the defendant. More so, the proposed amendment of written statement pertaining to serial no. 1 of schedule of amendment, according to Mr. Podder, would seek to displace the plaintiff completely from his case.

Reliance was placed by the learned advocate for the petitioner on a decision reported in **AIR 1977 SC 680** delivered in the case of **M/s. Modi Spinning & Weaving Mills Co. Ltd. and Anr. Vs. M/s. Ladha Ram & Co.** , wherein the Apex Court affirmed the decision of the concerned High Court rejecting the application for amendment of written statement, as the same would displace the plaintiff completely from the admission made by the defendant in his written statement.

As regards the proposed amendment appearing in serial nos. 2 and 3 of schedule of amendment, learned advocate for the petitioner contended that there had been no necessity for amendment of written statement with reference to of serial nos. 2 and 3, because in the original written statement, it was already there, and as such it was an unnecessary exercise made by the defendants/opposite parties, which learned court below ought not to have allowed. It was also contended by Mr. Poddar that it was a suit for recovery of kash possession of the suit premises, in

respect of one room under possession of the defendant/opposite party in the first floor of the building, upon resorting to Section 6 of the West Bengal Premises Tenancy Act, 1997. The defendant/opposite party categorically admitted in his written statement that he was tenant in respect of one room in the first floor of the building, and has been using and occupying the said premises for three decades by paying rent therefor without any default. Such admission of defendant, if allowed to be resiled and/or withdrawn taking help of proposed amendment of the written statement, so far as serial no. 1 of schedule of amendment is concerned, the petitioner/plaintiff would be completely displaced from his suit, and further would be deprived of the opportunity of extracting the admission, deliberately and consciously made in the written statement, vide para 9 of the written statement.

Mr. Poddar also urged before the court that denial of ownership plaintiff/petitioner by the opposite party/tenant, and consequently denial of tenancy by the opposite party, not being raised in course of hearing of the petition filed by the opposite party/defendant under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, the petition for amendment of written statement was nothing, but harrasive, purposive and simply to displace the petitioner/plaintiff from the instant suit.

Capital was sought to be derived by the learned advocate for the petitioner from a further decision reported in **(2009) 10 SCC 84** delivered in the case of **Revajeetu Builders & Developers vs. Narayanaswamy &**

Sons & Ors., in order to establish that necessary factors for making consideration of the prayer for amendment of the written statement even could not be taken into account by the court below.

Mr. Ananda Gopal Mukherjee, learned advocate for the opposite party/tenant being assisted by Mr. R. A. Agarwal raised challenges against the submissions advanced by the learned advocate for the petitioner submitting that the learned court below rightly exercised its power under Order VI Rule 17 of the Code of Civil Procedure, by allowing the amendment of the written statement, so that the real controversy between the parties could be effectively and properly adjudicated. It was thus argued by the opposite party that it is a settled law that even if there is admission in the written statement, it would be still open to the party to approach the Court by way of filing an application for amendment, and further that amendment of the pleadings may be allowed at any stage of the proceedings, unless serious prejudice, of irreparable loss is caused to the other side.

Reliance was sought to be made by learned advocate for the opposite party on a decision reported in **AIR 1983 SC 462** rendered in the case of **Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay & Anr.**, that admission made by a party may be withdrawn or may be explained away.

Countering the submissions of the learned advocate for the petitioner, Mr. Mukherjee further submitted that when on carefully scrutiny of the case record, the Court came to a definite finding that

prayer for amendment of the written statement was necessary for deciding the real question in controversy, and the same being formal in nature, ultimately allowed the prayer for amendment of the written statement observing therein further that it will not change the nature and character of the suit property; the same being made upon due exercise of judicial discretion, it would remain unaltered.

Incidentally it was also submitted that since the schedule of the plaint suffered from vagueness, wherefrom recovery of possession had been sought for taking recourse to Section 6 of the West Bengal Premises Tenancy Act, 1997, there arose the necessity to seek for amendment of the written statement, and learned court below in due exercise of its judicial discretion, allowed the amendment of the written statement taking into account that even if a party or its counsel was inefficient in setting out its case initially, the shortcomings could certainly be removed generally by taking appropriate steps, subject to payment of costs, and such error was not incapable of being rectified, unless the remedial steps would not unjustifiably injure rights accrued to the opposite party.

Reliance was placed on a decision reported in **AIR 1978 SC 484** delivered in the case of **M/s. Ganesh Trading Co. vs. Moji Ram** .

The Court is thus required to address the solitary issue whether the prayer for amendment of the written statement was rightly allowed or not.

It requires no mention that some of the important factors are necessarily to be kept in mind by the Court, while addressing a prayer for

amendment of pleadings under Order VI Rule 17 of C.P.C. Such factors though illustrative, but are not exhaustive. Yet are significantly relevant for the determination of the present issue under reference, which are mentioned hereinbelow, as shown in para 63 of a decision referred above in the case of **Revajeetu Builders & Developers (supra)**.

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:

(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 rule, 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 6 Rule 17. These are only illustrative and not exhaustive.

Such important factors, thus necessary to be considered by the Court, while taking up prayer for amendment of the pleadings by either of the parties to this case, were even reinforced in the decision of the Apex Court reported in **(2011) 12 SCC 268** delivered in the case of **State of Madhya Pradesh Vs. Union of India an Anr.** para 10, and subsequently

in case of ***Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria & Ors.*** reported in ***(2015) 10 SCC 203***, para 20.

Therefore, when it is the settled proposition of law that some important factors, as set out hereinabove, have to be necessarily taken into account by the court dealing with amendment of the pleadings under Order VI Rule 17 of the Code of Civil Procedure, the learned court below is thus, obliged to follow the same in discharge of its judicial authority.

Order VI Rule 17 consists of two parts. First part is discretionary and leaves it to the court to order of amendment of pleadings, whereas the second part is imperative and enjoins the court to allow all amendments, which are necessary for the purpose of determining the real question in controversy between the parties.

The real controversy surfaced in the instant case hinges upon the issue pertaining to a prayer for recovery of possession in respect of a suit premises, shown in the schedule of the plaint. For the vagueness of the schedule, if there be any, the consequent effect thereof is likely to suffer by the plaintiff/petitioner, who admittedly invited suit taking recourse to Section 6 of the West Bengal Premises Tenancy Act, 1997, on the ground of reasonable requirement, subletting etc, upon prior determination of the tenancy by issuing a notice therefor to tenant/opposite party.

So far as serial no.1 of the proposed amendment, as appearing in schedule of the amendment, is concerned, it appears that under the behest of amendment, the opposite party/defendant had sought for

amendment of written statement, thereby resiling/retracting/withdrawing his own admission giving a consequent threat to the nature and character of the suit instituted against the opposite party/defendant.

There lies no controversy that the court has undoubted power to allow amendment of pleadings at any stage of the proceedings, as mentioned in Order VI Rule 17 of the Code of Civil Procedure, and amendment of the pleadings should not be disallowed, unless serious prejudice or irreparable loss is caused to the other side.

The pertinent question, thus falls for determination is whether the opposite party/tenant is permitted to retract from his own admission so as to dispute his tenancy, even after making categorical admission in para 9 of the written statement, and further also after the decision of petition, filed by defendant/opposite party under Sections 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997.

In the decision referred by opposite party reported **AIR 1983 SC 462** rendered in the case of **Panchdeo Narain Srivastava (supra)**, the plaintiff described himself in the plaint as a son of the uterine brother of one persons, subsequently the plaintiff moved an application for amendment of the plaint, inter alia, seeking deletion of the word 'uterine' from the plaint. The Trial Court granted the application for amendment, which was set aside by the High Court. The Apex Court, however, disagreed with the decision rendered by the High Court, holding that by amendment, an admission of fact can be withdrawn. The instant case, as

presented hereinabove, is this factually distinguishable, and such decision would hardly find any scope to be applied over the facts and circumstances of the case.

No doubt the purpose of amendment of the pleadings is to promote the ends of justice, subject to such terms as to cost and giving to all parties concerned necessary opportunities to meet the exact situation resulting for amendment.

Upon visualizing serial no.1 of the proposed schedule of amendment withdrawing admission, and thereby retracting its own categorical admission, contained in the written statement, vide para 9, such error, whatever may be the reasons therefor, is of such a magnitude, having regard to the nature and character of the suit, is incapable of being rectified in view of the provisions contained in Section 58 of the Evidence Act.

The decision referred by learned advocate for the opposite party being **AIR 1978 SC 484**, delivered in the case of **M/s. Ganesh Trading Co. (supra)** is this distinguished, as regards its applicability over the facts and circumstances of this case.

The proposed amendment as regards serial no.1 of the schedule of amendment would definitely seek to displace the plaintiff completely from the admission made by the defendant, and plaintiff would thus be irretrievable prejudiced by being denied the opportunity of extracting the admission from the defendant. Such proposition of law as decided in **AIR**

1977 SC 680 delivered in the case of **M/s. Modi Spinning & Weaving Mills Co. Ltd. (supra)** would squarely apply in the present facts and circumstances of the case, so far as the serial no.1 of the schedule of the proposed amendment is concerned.

As regards the scope of withdrawing and/or retracting one's own admission in the pleadings, the Apex Court in the case of **Ram Niranjan Kajaria Vs. Sheo Prakash Kajaria & Ors.** reported in **(2015) 10 SCC 203** held upon reiterating the decision of **Nagindas Ramdas Vs. Dalpatram Ichharam** reported in **(1974) 1 SCC 242** and at the same time overruling the decision of the Apex Court on this point reported in **1984 Supp SCC 594** in the case of **Panchdeo Narain Srivastava Vs. Jyoti Sahay** that categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. The relevant observation of the Apex Court made in para 22 of decision rendered in the case **Ram Niranjan Kajaria (supra)** may be quoted hereinbelow:

22. Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position. It is seen that the issues have been framed in the case before us, only in 2009. The nature and character of the amendment and the other circumstances as in the instant case which we have referred to above, are relevant while considering the delay and its consequence on the application for amendment. But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in *Nagindas Ramdas v. Dalpatram Ichharam*. To quote para 27: (SCC pp.251-52):

“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence

of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. 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 admissions. The former class of admissions are fully 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. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.” (Emphasis supplied)

The law is thus quite settled by Apex Court as regards the permissibility of withdrawal of admission appearing in pleadings, by laying down the ratio that the admission in pleadings or judicial admission, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or hearing of the case stand on a higher footing, than evidentiary admissions.

Such admission of defendant/opposite party, as regards making admission of tenancy disclosed in para 9 of written statement, under the plaintiff/petitioner would be binding against him.

Learned court below, for the reasons mentioned hereinabove, was not justified in allowing the prayer for amendment of the written statement, as appearing in serial no.1 of the proposed schedule of amendment. With regard to the serial nos. 2 and 3 of proposed schedule of amendment, it appears that serial no.2 is relatable to consolidation of

facts making certain deletion of facts, but not relatable to withdrawal of any earlier admission made in any paragraphs of the written statement, and if such amendment is allowed, it would not cause any prejudice to either of the parties to this case, in view of nature and character of the suit. The proposed amendment, as regards the serial no.3 of the schedule of the amendment, it appears that the “suit premises” was sought to be substituted by the words “place of business”, and that being the entirety of the circumstances contained in serial nos.2 and 3, it is purely formal in nature.

In the result, the prayer for amendment of serial no.1 of the schedule of amendment of written statement appears to have been erroneously reached without adhering to the parameters laid down by the Apex Court, and the settled proposition of law, decided by the Apex Court on such issue.

Accordingly, that part of the impugned order dealing with proposed prayer for amendment of written statement appearing in serial no.1 of schedule of amendment is set aside only.

The amendment of written statement with regard to serial nos. 2 and 3 of the schedule of amendment will, however, remain unchanged. The impugned order is thus modified to the extent mentioned herein above.

Opposite party is given liberty to furnish amended copy of written statement in terms of this judgment before the learned court below within four (04) weeks from the date of communication of this order.

With this observation and direction the revisional application stands disposed of.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)