

05.09.2023
Sl. No.14(DL)
srm

C.O. No. 2045 of 2023

**Arati Plastic, A Proprietorship Firm Represented
by its Proprietor Sri Rathin Mondal**

Versus

Sri Rajendra Yadav

Mr. Tanmoy Chattopadhyay,

...for the Petitioner.

Mr. Sukumar Bhattacharyya,

Mr. Soumitra Dey,

Ms. Puja Sonkar

...for the Opposite Party.

The revisional application arises out of an order dated May 2, 2023 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah, in Title Suit No.155 of 2014.

By the order impugned, the learned court below rejected an application for amendment of the written statement. At the stage of evidence of DW, an application for amendment of the written statement was filed for incorporation of certain facts which allegedly could not be incorporated due to *bona fide* mistake of the defendant.

The learned court was of the opinion that the amendment sought to be incorporated was completely misconceived and a clear afterthought, which would change the nature and character of the suit. The stand in the

amendment application was contrary to the stand taken by the defendant in the written statement. Thus, at the stage of evidence, the defendant could not be permitted to amend the written statement.

Mr. Chattopadhyay, learned Advocate appearing on behalf of the petitioner/defendant, submits that the admission made in the written statement would not bind the defendant, as the plaintiff, while inducing the petitioner in the property in question, did not disclose that there were other co-sharers in the property. In view of such suppression of fact, fraud was practised on the defendant and hence the defendant was legally entitled to withdraw the admission and deviate from the same, by introducing the averments made in the amendment application. Under such circumstances, the defence case could not be restricted to the contents of the written statement. Withdrawal of the admission was also permissible.

Mr. Chattopadhyay further submitted that the affidavit-in-chief of the PW1 would indicate that further cheques were received and adjusted with the licence fees and hence there was holding over. This fact was also necessary to be incorporated.

Finally, Mr. Chattopadhyay submits that the examination-in-chief of the PW1 and cross-examination would

indicate that by filing Title Suit No.137 of 1987, one Om Prakash Chaturvedi and others claimed co-sharership in respect of the said property. Hence, as the PW1 was not the sole owner of the property in question, the suit for eviction could not have been filed.

Mr. Bhattacharyya, learned Advocate appearing on behalf of plaintiff/opposite party, submits that the application for amendment was rightly rejected. First, the said application was barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure. The application for amendment does not indicate that the petitioner, in spite of exercise of due diligence, was not in a position to bring the fact on record earlier, i.e., prior to commencement of trial. That there was no explanation for the delay in filing the application for amendment. That the admission specifically made in each and every paragraph of the written statement was sought to be withdrawn by incorporation of the expression 'tenant' in place of 'licensee'. It is further submitted by Mr. Bhattacharyya that the amendment was brought at the fag end of the trial, only to fill up the lacuna.

Having considered the rival contentions of the parties, there is no doubt that the application was hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure. The exercise of due diligence and the reasons as to why the facts could not

be brought on record prior to trial, have not been stated. Not a single sentence has been dedicated as to how the requirement of due diligence had been complied with.

Secondly, whether there has been holding over by acceptance of cheques, or whether the suit was maintainable at the instance of the landlord, are matters of trial.

Thirdly, it appears to the court that by way of an amendment, the petitioner wanted to incorporate the expression 'tenant' in each and every paragraph and sentence where the expression 'licensee' appeared in the written statement. Meaning thereby, the defendant has sought to change its stand completely, by withdrawing the admission that the defendant was a licensee in respect of the premises and was paying licence fees. The defendant now claims to be a tenant in the suit property and was possessing the property by paying rent.

The written statement, which has been enclosed to the revisional application, indicates that the defendant had admitted that the defendant was inducted as a licensee under the plaintiff in respect of the suit property on the basis of an agreement for licence executed on December 15, 2008. That the landlord was entitled to receive Rs.3,400/- as licence fees in terms of the agreement for licence. By virtue of the agreement for licence, the defendant had the right to use the property for

his business purpose. That the defendant never defaulted in payment of the licence fees. Paragraph 11 to 17 and 19 of the written statement clearly indicate that the petitioner contested the proceeding upon acceptance of the fact that the petitioner was a licensee in respect of the property in question and was entitled to reside in the property upon regular payment of the licence fees.

By way of an amendment, a completely different case was sought to be made out which would change the nature and character of the suit and irretrievably displace the case of the plaintiff as the admissions were sought to be withdrawn.

Reference is made to the decision of ***Modi Spinning. & Weaving. Mills Co. Ltd. v. Ladha Ram and Co.*** reported in ***AIR 1977 SC 680*** and ***Heeralal vs. Kalyanlal*** reported in ***(1998) 1 SCC 278*** and ***Ram Niranjan Kajaria vs. Sheo Prakash Kajaria and Ors.***, reported in ***(2015) 10 SCC 203***, wherein it has been held that admissions in the written statement could not be withdrawn. An admission made by the defendant in the written statement is binding. Admission amounts to waiver of proof and cannot be allowed to be withdrawn by amending the written statement.

Under such circumstances, the revisional application is disposed of without any interference with the order impugned.

The other points raised by Mr. Chattopadhyay shall be available to him at the trial.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)