



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

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Order reserved on: 29.05.2023

Order pronounced on: 03.07.2023

+ **CM(M) 215/2023 & CM APPL. 6445/2023 (for stay)**

MAHESH CHANDER KUMAR

..... Petitioner

versus

BHAGWAN SINGH SAINI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Praveen Suri, Advocate.

For the Respondent : Mr. Sachin Mittal, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges order dated 12.01.2023 in CS (COMM) 253/2021 titled *Bhagwan Singh Saini vs. Mahesh Chand Kumar* whereby the learned Trial Court had dismissed the application under Order VI Rule 17 CPC, 1908 preferred by the petitioner/defendant before the learned Trial Court seeking amendment to the written statement.

2. The background facts shorn of all unnecessary details and restricted to the disputes before this Court are as under:-

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- a. That Petitioner/Defendant had taken out the premises RZ-118C, 2nd floor, Khandolia Plaza, Vaishali, Dabri Palam Road New Delhi-110045 for commercial purposes from Respondent/Defendant @ monthly rent of Rs. 45,000/- as per the rent agreement dated 24.07.2017 for a period of 11 months starting from 01.08.2017. The said rent agreement was also subsequently renewed on 01.08.2018.
- b. That on 19.11.2020, a Suit for possession and for Mesne Profit/Damages was filed by the Respondent/Plaintiff against the Petitioner/Plaintiff alongwith an Application under Order 39 Rule 10 /w Section 151 of Code of Civil Procedure, 1908.
- c. That in the said suit, Notice was issued on 27.11.2020 for 21.12.2020.
- d. Thereafter, on 14.12.2020, Written Statement was filed by the Petitioner/Defendant alongwith Reply to Application under Order 39 Rule 10 /w Section 151 of CPC, Application under Order 7 Rule 11 of CPC and Section 8 of Suit Valuation Act, Application under Section 151 of CPC for dismissal of plaint.
- e. On 19.12.2020, Replication to the Written Statement filed alongwith Reply to the Application filed by Defendant under Order 7 Rule 11 of CPC and Section 8 of Suit Valuation Act, Reply to Application under Section 151 of CPC by Defendant. The Respondent/Plaintiff had also filed an Application on behalf of the



plaintiff under Order XII Rule 6 r/w Section 151 of the Code of Civil Procedure, 1908.

f. Subsequently, on 18.02.2021, an Application under Order VI Rule 17 r/w Section 151 of CPC on behalf of Defendant seeking amendment of the written statement, dismissal of which by the impugned order dated 12.01.2023, is the subject matter of challenge before this court.

3. Mr. Suri, learned counsel for the petitioner submits that so far as the amendment sought to be brought to the averments in a written statement is concerned, the same does not have to pass to rigors of which a plaint is to undergo. In other words, Mr. Suri submits that the amendments in a written statement, even if the amendments are inconsistent can and ought to be allowed.

4. Mr. Suri relies upon the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd., 2022* reported in *SCC OnLine SC 1128* to submit that in any case, at the time of filing of the amendment, the Civil Courts ought not to consider the merits of the amendment which may be considered at the stage of trial. The edifice of such ratio, obviously being that the other party shall always have a right to object to the same and counter the same during trial. The other argument of Mr. Suri is predicated upon the contention that though the petitioner was inducted as a tenant under an agreement executed between the parties for the commercial use of the second floor of the subject suit property, the amendment was sought on the basis that the reply of the municipal



corporation regarding the fact that the said property could not be given out on commercial tenancy since the said property was within the area ear marked as “Mixed Land Use”. Learned counsel relies upon the letter dated 28.01.2021 of the Municipal Corporation of Delhi to submit that the corporation had categorically asserted that the subject suit property is situated in an area earmarked as “Mixed Land Use” and only the ground floor of such property can be utilized for commercial purposes. Learned counsel submits that the aforesaid letter of the Municipal Corporation of Delhi was filed by the corporation in a writ petition filed by the petitioner against the said corporation challenging the cancellation of the trade license issued by it to the petitioner.

5. Mr. Suri also submitted that keeping in view the aforesaid knowledge gained by the petitioner about the information revealed by the corporation, that the application under Order VI Rule 17 CPC was necessitated. The contention of Mr. Suri, on that count is, that the agreement to lease being violative of a condition prescribed by an authority, the agreement itself is void under the provisions of Section 23 of the Indian Contract Act,. Learned counsel submits that the same cannot be construed as an admission which is being retracted or resiled from, being a pure question of law. It is on this basis, that learned counsel submits that the application under VI Rule 17 CPC ought to have been allowed for the reason that (i) the amendments ordinarily ought to be allowed as per the settled law and (ii) that the said amendments are not admissions which are being withdrawn and are legal assertions on the basis of Section 23 of the Indian Contract Act, 1872, as applicable to the agreement to lease in question.



6. So far as the contention in respect of the Section 23 is concerned, Mr. Suri relies upon the judgment of ***G.T. Girish v. Y. Subba Raju***, reported in ***(2022) 12 SCC 321*** particularly paras 64, 70, 71 and 72 to submit that according to Section 23 an agreement becomes unlawful when the consideration or object of agreement is forbidden by law. In other words, Mr. Suri submits that the agreement to lease in question for commercial tenancy being contrary to the Mixed Land Use Regulations of the corporation, a contract itself is void.

7. On the basis of the aforesaid judgment in ***G.T. Girish (supra)*** learned counsel submits that no advantage of whatever nature can be derived from such void contracts. In that, the lease agreement in question being violative of Section 23 of the Indian Contract Act, the direction to deposit arrears of rent under orders passed under provisions of Order XXXIX Rule 10 of CPC, cannot be directed to be deposited by the petitioner. Mr. Suri submits that no party can derive unjust enrichment of such void agreements.

8. Mr. Suri also submits that the necessary concomitant for the consideration of whether an application under Order VI Rule 17 CPC ought to be allowed, is whether such amendment is necessary for the determination for the real question in controversy. According to him, this is the basic test which should govern the Courts while exercising their discretion.

9. Mr. Suri also submits that mere filing of a counter claim does not preclude the petitioner from filing an application seeking amendment of the written statement. Learned counsel also strenuously submits that the suit is at a nascent stage and therefore no prejudice at all of any nature shall be caused to the respondent/plaintiff.



10. Learned counsel also submits that the respondent was aware that at the time when the parties executed the agreement to lease, the subject suit property situated on the second floor could not have been leased out for commercial purposes. On that basis, learned counsel submits that the said amendment is imperative to be inserted in the written statement.

11. *Per Contra*, Mr. Mittal learned counsel for the respondent/plaintiff submits that at the outset the judgment of **G.T. Girish (supra)** rendered by the Supreme Court would not be applicable inasmuch as the Supreme Court was examining an issue which arose out of an agreement executed between the parties seeking specific performance.

12. In fact, Mr. Mittal submits that the judgment of the Supreme Court in **Nutan Kumar v. Hnd Additional District Judge & Ors.**, reported in **(2002) 8 SCC 31** is applicable to the facts of the case being based on similar facts. According to learned counsel in the case of **Nutan Kumar (supra)**, the Supreme Court was considering as to whether a contravention of the provisions of a particular Act would render an agreement to lease unenforceable. Mr. Mittal submits that the Supreme Court had answered in the negative.

13. Mr. Mittal vehemently urges that the application under Order VI Rule 17 CPC was filed with a view only to delay and protract the trial inasmuch as the said application was filed only after applications under Order XXXIX Rule 10 and Order XII Rule 6 CPC were filed by the respondent.

14. Mr. Mittal categorically submits that the amendments as sought by the petitioner are nothing but a ploy to withdraw/retract the categorical admissions made in respect of: (i) the landlord-tenant relation (ii) the admitted



possession of the subject suit property and (iii) the admitted rent, which was asserted by the petitioner in his written statement. According to Mr. Mittal, by way of the said application, the petitioner is seeking to completely withdraw the aforesaid admissions by now stating that the lease agreement itself is void and is unenforceable in law.

15. Mr. Mittal also invited attention of this Court to the impugned order whereby the learned Trial Court has noted the specific admissions of the petitioner/tenant and after considering the same, concluded that the contents of the amendment application amount to withdrawal/retraction of the admissions made by the petitioner in his written statement. To buttress his submission, Mr. Mittal relies upon the judgment of the Supreme Court in **LIC (supra)** particularly to para 70.

16. This Court has considered the submissions of the parties.

17. At the outset, it is relevant to note the guidelines laid down by the Supreme Court in **Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd., 2022** reported in **SCC OnLine SC 1128** which reiterated the propositions of law as laid down by the Supreme Court in **Revajeetu Builders & Developers v. Narayanaswamy & Sons**, reported in **(2009) 10 SCC 84**.

It would be apposite to extract the guidelines while considering an application under Order VI Rule 17 CPC, as laid down in **LIC vs. Sanjeev Builders**, which are as under:-

“70. Our final conclusions may be summed up thus:

- (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The*



plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.



- (viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
- (xi) *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)."*

(emphasis supplied)

18. It is evident from the aforesaid guidelines that in no case where admissions are sought to be withdrawn by clever and ingenious drafting under the garb of amendment of pleadings can be permitted by the Civil Courts at any stage of the proceedings. In the present case, the written statement of the petitioner contained, what essentially may amount to admissions which would fall within the scope of Order XII Rule 6 as also Order XXXIX Rule 10 of CPC, 1908.



19. So far as the factum of landlord-tenant relation, possession of the tenanted property as also the amount of rent per month is concerned, has not been categorically disputed by the petitioner and the only case for amendment is based on the assertion that the subject suit property could not have been leased out on a commercial basis contrary to the guidelines of the Municipal Corporation of Delhi respecting the Mixed Land Use Regulations.

20. Having regard to the aforesaid submissions of the petitioner, the amendment whereby the petitioner now is seeking to assert that the agreement itself is void being violative of Section 23 of the Indian Contract Act, it is apparently an *ex facie* withdrawal of the admissions so made in the original written statement filed by the petitioner. This is apparently violative of the guidelines laid down by the Supreme Court in *Reeva Jeetu (supra)* and *LIC (supra)* and as such cannot be allowed.

21. The reliance by the petitioner upon the judgment of *GT Girish (supra)* is misplaced for the reason that in the present case the letter of the corporation upon which the petitioner is predicating the entire amendment is yet to be placed on record before the learned Trial Court and is still subject to the outcome of the trial. Whereas, in the judgment rendered by the Supreme Court in *GT Girish (supra)* the issue was with respect to specific performance of lease-cum-sale agreement which underwent a full trial.

22. This Court has also considered the judgment of the Supreme Court in *Nutan Kumar (supra)* whereby the Supreme Court had, after considering the judgment of *Nanak Ram vs. Kundal Rai* reported in (1986) 3 SCC 83 held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act, the lease would not be void and the



parties would be bound, as between themselves, to observe the conditions of the lease. Keeping in view the said law, this Court also is of the considered opinion that as of now and till such time the petitioner is able to prove that the lease agreement is void on account of being violative of the MLU Regulations in trial, the conditions of the lease agreement would continue to bind the parties.

23. In that view of the matter, this Court is of the considered opinion that the learned Trial Court committed no error, material irregularity or judicial impropriety while passing the impugned order.

24. The petition along with pending application, if any, is hereby dismissed with no order as to costs.

TUSHAR RAO GEDELA, J

JULY 3, 2023/१३

