



2024 : DHC : 446



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

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Judgment reserved on: 05.01.2024

Judgment pronounced on: 22.01.2024

+ CM(M) 1821/2023, CM APPL. 57677/2023

DHRUV KUMAR SINHA

..... Petitioner

Through: Dr.D.K. Sharma, Mr.Gaurav Kumar
and Mr.Krishna Parashar, Advocates.

versus

RAJ BALA TANWAR

..... Respondent

Through: Mr.Chetanya Puri, Mr.Rahul Saini,
Ms.Nisha Puri and Mr.Dheeraj,
Advocates.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The original defendant i.e. petitioner herein, has instituted the present petition impugning the order dated 23.09.2023 passed by the Court of learned District Judge (Commercial Court) – 03, West (hereinafter referred to as '**Trial Court**'), Tis Hazari Courts, Delhi in Commercial Suit No. 57/2023 titled as '**Smt. Raj Bala Tanwar v. Dhruv Kumar Sinha**', whereby the learned Trial Court has dismissed the application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereafter referred to as '**CPC**') for amendment of written statement.

2. Pertinently, the learned Trial Court vide the same order on 23.09.2023 passed a decree for possession of the subject property i.e., WZ-508B/3, situated as Village Basai Darapur, New Delhi-110015, under Order XII Rule 6 of the CPC, which has been challenged by the petitioner



by filing the Regular First Appeal (Comm.) in other proceedings. Thus, the matter is pending before the learned Trial Court for adjudication of arrears of rent and mesne profit/ damages.

3. The dispute between the parties is related to possession of the subject property i.e. One hall on the Ground Floor of property no. WZ-508B/3, situated as Village Basai Darapur, New Delhi-110015, and for recovery of arrears of rent.

4. This Court deems it apposite to extract relevant facts.

5. The petitioner in January, 2014 took the subject property on rent from the respondent on a monthly rent of Rs. 10,000/-. The tenancy was extended/ renewed from time to time. On 20.01.2021, a fresh rent agreement was executed between the petitioner and the respondent for a period of 33 months @ Rs. 15,000/- per month.

6. It is the case of the petitioner herein that eventually, the respondent herein asked the petitioner to vacate the subject property even when the petitioner was regularly paying the rent and abided by the terms and conditions of the rent agreement. On 05.07.2022, the respondent was served a legal demand notice upon the petitioner thereby alleging that since the petitioner had not paid the rent, thus, the tenancy stands terminated and asked the petitioner to handover the possession of the subject property to the respondent. On 21.07.2022, the petitioner replied to the above notice and mentioned that the petitioner had paid up-to-date rent and had not defaulted and, thus, the alleged termination of his tenancy is illegal.

7. On 29.08.2022, the respondent filed an ordinary civil suit bearing no. Civ. DJ No. 781/2022 against the petitioner for possession, recovery of arrears of rent, mesne profit, damages, etc. in respect of the subject



property, and consequently, on 30.08.2022, the above-said suit was withdrawn by the respondent on technical grounds. On 24.12.2022, the respondent filed a Commercial Suit seeking aforesaid reliefs which the petitioner contested by filing a detailed written submission.

8. On 01.08.2023, the petitioner filed an application under Order VI Rule 17 read with Section 151 of the CPC for amendment in the written statement. The respondent filed a reply to the application and on the same date, the learned Trial Court heard the arguments. The learned Trial Court also disposed of the application under Order VI Rule 17 CPC read with Section 151 CPC and also decided the issue of possession under Order XII Rule 6 CPC vide a common order passed on 23.09.2023.

9. The impugned order returns the following findings against the petitioner on his application under Order VI Rule 17 CPC.

“9. None of those amendments sought by the defendant are necessary to be incorporated in the WS and it is not justified by the defendant as to why these pleas were not taken in the detailed WS already tiled. The WS was filed by the defendant on 28.04.2023, whereas the present application has been filed on 01.08.2023. The plea of the defendant that the WS was filed urgently, is uninspiring as the defendant was served on 23.03.2023 whereas the WS was filed on 28.04.2023, that is after 30 days. On 23.05.2023 it was claimed on behalf of defendant that already WS was filed within 30 days, but the WS was not found on record and the Ld. Predecessor Court gave opportunity to the defendant to file afresh copy of the WS. In the meanwhile, it seems that the WS filed by the defendant on 28.04.2023 was traced and put-up record.

10. U/o 6 Rule 17 CPC amendment of pleadings can be undertaken before commencement of the trial, where the amendments sought are necessary for the purpose of determining the real questions in controversy between the parties. None of the pleas raised in the application, and as mentioned above, entitles the defendant to seek amendment in the WS. Typographical errors in the House no. of the plaintiff and Aadhaar no, is unnecessary to be pleaded in the WS by way of amendment. The dispute raised by the defendant about pre-



litigation mediation processes are also incomprehensible from his application. Non-Starter Report of mediation issued by the concerned DLSA reveals that the pre-litigation mediation 1 could not commence as the defendant could not be served. Date of issuance of notices to the defendant mentioned in the Non-Starter Report are sought to be misconstrued by the defendant in the present application, which are absolutely unnecessary.

11. Similarly, the prayer of the defendant that the tenancy was between 10th of English Calendar month to the 9th of following English Calendar month and the rent receipt were not issued by the plaintiff every month or that the plaintiff used to issue several rent receipts subsequently for several months at one go, is already pleaded by the defendant in the WS. The defendant has also already pleaded in the WS about commencement of the tenancy from 10 of every English calendar month. Even the plaintiff has mentioned the tenancy month to be from 10th of every month to 9th of following month. Therefore, there is no justification seeking amendment qua it also.

12. So far as the amendments sought qua audio CD no. 1 dated 28.03 2022 is concerned, no such document has been filed on record by the defendant along with WS or along with this application, till date. Therefore, the amendments sought qua relying on the audio CD, without filing and relying on that CD is out of question.

13. Lastly, the defendant seeks to incorporate payment of certain amounts to the plaintiff by claiming that extra amount has been paid to the plaintiff and the defendant has calculated and added interest on the said amount also and now the defendant seeks to recover the extra amount allegedly paid, the interest thereon. Even this amendment is unnecessary as the defendant has already pleaded in the WS about paying of rent to the plaintiff from time to time. If the case of the defendant is that he had over paid the rent which he needs to recover, he should have pleaded counter claim or set off, which has not been done.

14. Thus the application U/o 6 Rule 17 CPC filed by the defendant is without merit and is dismissed.”

10. The learned counsel for the petitioner submits that the learned Trial Court failed to consider that the amendments sought by the petitioner in his application under Order VI Rule 17 of the CPC were very much essential



for proper adjudication of the case but erroneously dismissed the application of the petitioner.

11. It is submitted that the matter was at the initial stage and even the replication has not been filed. On account of the urgency in filing the written statement, some essential objections and facts were skipped by the petitioner, which is necessary for the proper adjudication of the case. These were elaborately brought to the notice of the learned Trial Court by moving the present application under Order VI Rule 17 of the CPC seeking the amendment in the written statement, but even then, the said application was dismissed.

12. Conversely, learned counsel for the respondent submits that the application of the petitioner under Order VI Rule 17 of CPC was not maintainable as the same was a tactic of the petitioner to prolong the litigation and so is this petition. He further opposes the petition on the ground that the petitioner intentionally avoided mentioning such information in the written-statement which was available to him for which no such due diligence is needed. Moreso, the amendments that the petitioner wishes to bring to his written statement are not substantial to the Suit pending adjudication before the learned Trial Court. The observations of the learned Trial Court in the impugned order confirms the same.

13. Learned counsel for the respondent also pointed out the technical imperfections in the application so filed for amendment of the written statement by the petitioner. He stated that the application has not been drafted in compliance with direction No. 90/Rules/DHC dated 10.10.2022 which came into effect from 01.11.2022.



14. The provision under Order VI Rule 17 of the CPC for amendment of pleading was restored by the Code of Civil Procedure (Amendment) Act, 2002 with certain modifications. Post amendment, no application for amendment of pleadings shall, be allowed unless the Court concludes that despite due diligence, the party could not have raised the matter before the commencement of the trial.

15. In the case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, AIR 2005 SC 3353, the Hon'ble Supreme Court observed as under:

“Order VI, rule 17 deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that despite due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that despite due diligence, such an amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial.”

16. In the case of *B.K.N. Pillai v. P. Pillai*, AIR 2000 SC 614 (616), it has been categorically observed by the Hon'ble Supreme Court that, all amendments of the pleadings should be allowed which are necessary for the determination of the real controversy in the Suit provided. The proposed amendment does not alter or substitute a new cause of action based on which the original lis was raised or defense was taken.

17. The principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement. The Courts are more generous in allowing the amendment of the written-statement as the



question of prejudice is less likely to operate in that event. “The defendant has a right to take an alternative plea in defense which, however, is subject to an exception that by the proposed amendment, the other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn”. [*Narayan Pillai v. Parameswaran Pillai (2000) 1 SCC 712*].

18. As evident from the legal position as enunciated in the case of *B.K.N. Pillai (Supra)*, the first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. On the other hand, if the amendment is necessary to decide the real controversy “between the parties, the amendment should be allowed even though the Court may think the party seeking the amendment will not be able to prove the amended plea”. This is the basic test that governs the Court’s unchartered powers of amendment of pleadings. “No amendment should be allowed when it does not satisfy this cardinal test”. [*Narsing Prosad v. Steel Products Ltd. AIR 1953 Cal 15 (17)*].

19. Be, it noted, that the amendments proposed by the petitioner through his application under Order VI Rule 17 of the CPC are in the form of preliminary objections, typographical errors in the house number and Aadhar Card number of the respondent, and a couple of other amendments, which are discussed in detail in the impugned order dated 23.09.2023.

20. In so far, the amendment objecting to non-compliance of Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the ‘Act’) is concerned, the petitioner contends that the respondent has pleaded



in his Suit that pre- institution mediation process was initiated but the Suit was returned as non-starter due to non-appearance of the petitioner for pre-institution mediation. The preliminary objection raised by the petitioner through his application is vague and inexplicable. Moreso, the objection of the petitioner concerning the issuance / non-issuance of notice to him requiring his presence for pre-institution mediation is not material at this stage. The law is well settled that pre-institution mediation under Section 12A of the Act is mandatory. The process was followed, which resulted in non-starter, and the reason for rendering the pre-institution mediation as a failure is not necessary for deciding the real controversy between the parties.

21. The petitioner further wants to insert in the written statement by way of amendment, that the tenancy was between the 10th of the English Calendar month to the 9th of the following English Calendar month, and the rent receipts were not issued by the respondent every month or that she used to issue several rent receipts subsequently for several months at one go. It was submitted that by doing so, the respondent wants to prove that the petitioner had not paid the rent from December 2020 whereas after receiving the rent till 09.01.2021, the respondent had, therefore, executed a fresh rent agreement for another 33 months starting with effect from 20.01.2021.

22. The learned Trial Court has correctly observed in the impugned order that, the petitioner herein (defendant) has already pleaded in the written statement about the commencement of the tenancy from the 10th of every English Calendar month. Even, the respondent herein (plaintiff) has



mentioned the tenancy month to be from the 10th of every month to the 9th of the following month.

23. As would be manifest from reading the written statement, the other proposed amendments are also mentioned in the written statement. Therefore, once the facts to be amended are already mentioned in the written statement, there is no rationale in seeking the amendment of the written statement to incorporate the same facts but in different words.

24. The next amendment impressed upon by the petitioner to be made in the written statement is about audio CD no.1 dated 28.03.2022 containing the admission of the respondent concerning the issuance of rent (for 18 months). As is evident from the impugned order, the petitioner has not placed on record the said CD no. 1, along with the certificate under Section 65B of the Indian Evidence Act or its transcript along with his application or written statement. Therefore, the said amendment can also not be permitted in the absence of the relevant documents as, for the narration of a certain fact, the petitioner wants to rely upon the electronic evidence, which has not been placed on record.

25. Further, the petitioner wants to incorporate in the written statement payment of certain amount allegedly loan/extra amount paid to the respondent, interest thereon, and interest towards extra rent paid. The petitioner seeks to amend his written-statement to seek recovery of the extra amount allegedly paid and the interest thereon.

26. The aforesaid amendment pleaded by the petitioner is also inadmissible. In case, the petitioner is claiming the recovery of the extra payment made by him towards a loan or under any other head, he should



have pleaded the same by way of a counterclaim or set-off which has not been done in the present case.

27. Lastly, the plea of the petitioner is vague and indeterminate seeking correction of information concerning the correct address and number of the Aadhar Card in the 'Case Information Format' of the respondent and hence, cannot form a basis for amendment of pleadings. It is submitted that the address of the respondent has been wrongly mentioned as WZ-717A, Village Basai Darapur, New Delhi-110015 whereas, the actual address of the respondent as mentioned on the voter I-card is WZ-417A, Basai Darapur, New Delhi – 110015.

28. This Court is unable to sustain the submissions addressed on behalf of the petitioner seeking aforesaid amendments in the written statement.

29. In view of the above, the petition along with pending applications is dismissed.

30. It is needless to state that the observations made herein shall not tantamount to be an observation on the merits of the case before the learned Trial Court.

SHALINDER KAUR, J.

JANUARY 22, 2024/ss