

A.F.R.

Reserved On : 07.05.2024

Delivered On : 27.05.2024

Neutral Citation No. - 2024:AHC:95790

Case :- S.C.C. REVISION No. - 38 of 2024

Revisionist :- Mahendra Pratap Singh

Opposite Party :- Rama Raman And 5 Others

Counsel for Revisionist :- Ashwini Kumar

Counsel for Opposite Party :- Girish Kumar Gupta

Hon'ble Neeraj Tiwari,J.

1. Heard Sri Ashwini Kumar, learned counsel for revisionist and Sri Santosh Kumar Kesarwani, Advocate holding brief of Sri Girish Kumar Gupta, learned counsel for opposite parties.

2. Present revision has been filed seeking following relief:-

“It, is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to stay the further proceeding of S.C.C. Case No. 34 of 2013 (Rama Raman vs. Mahendra Pratap Singh) pending before Additional District Judge, Court No. 14/Special Judge Gangster Act, Varanasi.”

3. Learned counsel for petitioner submitted that respondents have filed S.C.C. Case No. 34 of 2013 in which revisionist has filed written statement on 05.02.2014 admitting the tenancy. After change of counsel, it was found that documents so annexed alongwith written statement is having a ‘license deed’, but due to typographical error, it is mentioned as ‘tenant’. He next submitted that after change of counsel, amendment application dated 23.03.2022 has been moved under Order VI Rule 17 of CPC for substitution of word, ‘licensee’ in place of word, ‘tenant’ which was rejected on the ground that first of all any admission made in written statement cannot be withdrawn. Secondly; change of counsel cannot be a ground to allow amendment application at a very belated stage. Further, condition of due diligence has also not been satisfied. He firmly submitted that Apex Court has categorically held that a liberal view is required to be taken while

deciding amendment application. In support of his contention, he has placed reliance upon the judgment of Apex Court in the matter of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*; 2022 0 Supreme(SC) 864.

4. Sri Santosh Kumar Kesarwani, Advocate holding brief of Sri Girish Kumar Gupta, learned counsel for opposite parties has vehemently opposed the submissions of learned counsel for revisionist and submitted that law is very well settled on this point that once any admission is given in written statement, same cannot be withdrawn. The very similar issue was before Apex Court in the matter of *Ram Niranjana Kajaria and others vs. Jugal Kishore Kajaria*; (2015) 10 Supreme Court Cases 203 and others in which Apex Court had clearly held that categorical admission made in the pleadings cannot be permitted to be withdrawn by way of amendment application. He further submitted that even in case of typographical error in written statement, admission cannot be withdrawn. In support of his contention, he has placed reliance upon the judgment of this Court in the matter of *Abdul Ahmad vs. Haq Nawaz Ahmad*; 2016(8) ADJ 176. He also pointed out that so far as change of counsel is concerned, that can also not be a ground at a very belated stage. In support of his contention, he has placed reliance upon the judgment of this Court passed in *Rama Nand and Ors. vs. Amrit Lal and Ors. (Civil Misc. Writ Petition No. 12067 of 2012)*.

5. I have considered rival submissions advanced by counsels for parties and perused the records as well as judgments cited above.

6. Facts of the case about the date of filing of suit, written statement and amendment application are not disputed.

7. Issue before the Court is as to whether admission made in written submissions may be withdrawn due to typographical error pointed by a new counsel i.e. due to change of counsel.

8. Learned counsel for petitioner has placed reliance basically upon paragraph nos. 25, 26 & 70 of judgment of *Life Insurance Corporation (Supra)*, which is being quoted below:-

“25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See *South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors.*, (2008) 14 SCC 632)

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

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

(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.

(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.

(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 & Ors.*, 2022 SCC OnLine Del 1897)”

9. From the perusal of afore-quoted judgment, it is clear that in the said judgment, Apex Court has clearly said that admission made in favour of plaintiff cannot be withdrawn, therefore, judgment is not in favour of petitioner rather against him.

10. Learned counsel for respondents has also placed reliance upon the judgment of *Ram Niranjana Kajaria (Supra)*. Relevant paragraph no. 23 of the said judgment is quoted below:-

“23. We agree with the position in *Nagindas Ramdas* and as endorsed in *Gautam Sarup* that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in *Panchdeo Narain Srivastava*, does not reflect the correct legal position and it is overruled.”

11. Apex Court has expressed view that categorical expression made in pleading cannot be permitted to be withdrawn and overruled the judgment of *Panchdeo Narain Srivastava v. Jyoti Sahay; 1984 Supp SCC 594*, in which a contrary view is taken.

12. Therefore, in the light of facts of the case as well as law laid down by the Courts, this Court is also of the firm view that once an admission is made in pleadings, same cannot be withdrawn by way of amendment application.

13. So far as typographical error is concerned, learned counsel for respondent has placed reliance upon the judgment of this Court in the matter of *Abdul Ahmad (Supra)*. Relevant paragraph nos. 15 & 20 are quoted below:-

“15. Having perused the above noted material on record, this Court finds that there is clear admission of the petitioner with regard to the landlord-tenant relationship between him and the plaintiff. He has made categorical statement in this regard in paragraph no.9 of the written statement. Though the admission in paragraph no.9 of the written statement has not been withdrawn as the petitioner did not seek any such prayer in the amendment application, however, the averments in paragraph no.15-A which he sought to add in the written statement shows that he wants to plead that there was no landlord-tenant relationship between him and the plaintiff and, therefore, suit at the instance of the plaintiff could not be maintained. This amendment has been sought with further assertion that there was a typographical mistake in the written statement for correction of which, the amendments are necessary.

20. The judgements relied upon by learned counsel for the petitioner are distinguishable in the fact of this cases inasmuch as, in both the cases namely *Sushil Kumar Jain (supra)* and *Ushal Bala Saheb Swami (supra)* it is held by the Apex Court that the amendment in the written statement was not for withdrawal of admission rather keeping the amendment intact something more was sought to be added. The contradiction and the confusion in the written statement was sought to be clarified.”

14. From the perusal of same, it is clear that any admission given in written statement cannot be withdrawn on the ground of typographical error.

15. Another issue taken by the revisionist is about change of counsel. This issue was very well considered by this Court in the matter of *Hari Shanker and 5 others vs. Bhawati Prasad Mishra; reported in 2014 (0) Supreme (All) 3127 and Shri Firoz Uddin and 4 others vs. Shri Anwar Uddin (Matters under Article 227 No. 5213 of 2013)*. Relevant paragraph of the judgment passed in *Hari Shanker (supra)* is quoted hereinbelow:-

"14. Supreme Court again in *J. Samuel v. Gattu Mahesh, (2012) 2 SCC 300*, held that due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested.

Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit. In the given facts, there is a clear lack of "due diligence" to search out the fact, which is to be amended in written statement. Therefore, the condition of due diligence could not be satisfied. Law is very settled and the mistake committed certainly does not come within the preview of a typographical error. Similar view was taken in *Vidyabai Vs. Padma Latha*, (2009) 2 SCC 409, *Sushil Kumar Jain Vs. Manoj Kumar*, (2009) 14 SCC 38 and *Abdul Rehman Vs. Mohd. Ruldu*, (2012) 11 SCC 341.

15. The written statement was drafted by an advocate after reading the plaint. After legal advice, it cannot be said that in exercise of "due diligence" the fact sought to be brought in the pleading by way of amendment was not in the knowledge of the defendant. A distinction has to be drawn between 'due diligence' and 'negligence'. The case of the defendants falls in the category of 'negligence' and not 'due diligence'. Trial Court rightly rejected the amendment application, as Proviso to Order VI Rule 17 C.P.C., now casts a rider on the power of the Court in allowing amendment application."

16. Again, similar issue was considered by this Court in the matter of *Shri Firoz Uddin (supra)*. Relevant paragraph of the said judgment is quoted hereinbelow:-

"20. So far as present case is concerned, there is no dispute on the point that except the engagement of new counsel, nothing has been stated in amendment application even after sincere efforts, they could not search out the fact, which is to be amended in written statement. Therefore, the condition of due diligence could not be satisfied. Law is very much settled that change of counsel cannot be a ground for filing amendment. Therefore, no interference is required in the impugned order dated 11.04.2023."

17. This issue was also considered by this Court in the matter of *Rama Nand (Supra)*, in which Court has held that change of counsel cannot be a ground to file amendment application. Relevant paragraph of the said judgment is quoted below:-

“Having heard Sri Shiv Nath Singh the facts of this case leaves no room for doubt, that the petitioners who are the defendants

were duly represented by a lawyer for the past several years, who consciously made an endorsement on 30.10.2007 that he does not want to file any additional written statement. The evidence was led thereafter and the witnesses were cross-examined. It is after some new lawyer who was engaged at the time of hearing that dawned on the petitioners that a mistake has been committed by not filing an additional written statement. The mistake of the lawyer of the petitioners as alleged, in my opinion, is not a mistake at all. It was a conscious endorsement by the lawyer not to file an additional written statement. Apart from this, the evidence with regard to the plea raised in the amended plaint has been adduced by the defendants. Thus, they cannot plead either mistake on behalf of the lawyer or on their behalf also. The petitioners cannot be permitted to raise a plea that their lawyer on a wrong advise made the endorsement. If this is condoned, then in every case a litigant will unscrupulously come forward with this plea and get the case reopened on one pretext or the other. The subsequent engagement of a counsel who has a better understanding of law cannot be a ground to plead that the earlier counsel was incompetent, particularly, in this case where an endorsement in writing has been made by the lawyer that he does not wish to file any additional written statement. ”

18. In the light of law laid down by the Courts, change of counsel cannot be a ground to file amendment application bypassing the rigorous conditions of due diligence. In fact, to meet out any mistake, no advantage can be given to litigant due to change of counsel.

19. In present case, facts are undisputed that due to typographical error as well as change of counsel, amendment application under Order VI Rule 17 of CPC has been filed to withdraw the admission earlier made in written submissions, which cannot be permitted in the light of law laid down by the Courts from time to time, therefore, I found no illegal or infirmity in the impugned order.

20. Revision lacks merit, hence **dismissed**.

21. No order as to costs.

Order Date :- 27.05.2024

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