

CS No.87/17
Krishna Jain vs. Balram & Ors.

27.05.2017

Present: Husband of the plaintiff in person.

Sh. Mahesh Kumar, counsel for defendant
no.1.

Ms.Nupur Sachdeva, proxy counsel for counsel
for defendant no.2.

Sh. Ajay Sharma, counsel for defendant no.3.

Reply on behalf of the plaintiff to application under Order 6 Rule 17 CPC filed by defendant no.3. Copy given.

Arguments heard. By way of the present application, the defendant no.3/applicant is seeking amendment in the written statement filed earlier averring *inter alia* that main counsel for the applicant was busy in MCD election and defendant no.3 had briefed to the colleague of the main counsel for preparing the written statement to the plaintiff who further briefed the main counsel Sh. N. C.Sharma and he got drafted the said written statement on behalf of defendant no.3. It has been further averred that defendant no.3 is 6th pass and cannot read and write English, hence in good faith and considering that the written statement has been drafted as per his instructions, has signed the same and got it filed before the court. It has been further averred that in the written statement some facts have

been inadvertently due to bonafide mistakes denied in the written statement, whereas the said facts were to be admitted. It has been further averred by way of the present application that he is now admitting that he was a mediator between defendant no.1 and plaintiff, which fact he inadvertently denied in the written statement.

In the reply, the plaintiff has contended that defendant no.1 cannot be allowed to make substantive changes in the written statement and the fact which has once been denied cannot be admitted later on and thus, would pray for dismissal of the application.

Heard. Record perused. Before dealing with the amendments sought in the application, I may first consider the principles under which amendments of pleadings can be allowed or rejected. The principle allowing or rejecting an amendment of the pleadings has emanated from **Order 6 Rule 17 of the Code of Civil Procedure**, which runs as under:

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

From a bare perusal of **Order 6 Rule 17 of the**

Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

In para no.2 of the plaint, it has been pleaded that defendant no.3/applicant was/is also a property dealer who acted as a mediator in purchase of plots etc. by the husband of the plaintiff. The said fact was denied by defendant no.3 in his written statement, however, now he is admitting the same by way of seeking the amendment. It is settled law that as far as the amendment in the written statement is concerned, the court has to be liberal in comparison to the amendment sought in the plaint. By way of the present application, defendant no.3/applicant is admitting the averments of the plaintiff in the plaint and therefore no prejudice would be caused to the plaintiff.

It is now well-settled that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. In this connection, the observation of the Privy Council in the case of *Ma Shwe Mya v. Maung Mo Hnaung AIR 1922 P.C. 249* may be taken note of. The Privy Council observed:

“All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.”

The Hon'ble Supreme Court in *Civil Appeal No.6921 of 2009 (Arising out of SLP (C) No. 1552 of 2007)* decided on: 09.10.2009 titled as '*Revajeetu Builders and Developers Vs.Narayanaswamy and Sons and Ors.*', held as under:-

“.....

WHETHER AMENDMENT IS NECESSARY TO DECIDE REAL CONTROVERSY:

61. 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. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY:

62. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side.

63. The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

64. In Ganga Bai's case (supra), this Court has rightly observed:

The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court.

COSTS:

65. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

(i) At what stage the amendment was sought?

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought

at a pre-trial or post-trial stage;

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic;

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

66. The purpose of imposing costs is to:

a) Discourage malafide amendments designed to delay the legal proceedings;

b) Compensate the other party for the delay and the inconvenience caused;

c) Compensate the other party for avoid- able expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and

d) To send a clear message that the parties have to be careful while drafting the original pleadings.

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing 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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.....”

Moreover, in the present suit, the amendment sought by defendant no.3 would not cause such prejudice which cannot be compensated adequately in terms of money and refusing amendment would in fact lead to injustice and to multiple litigation. The proposed amendment constitutionally or fundamentally does not change the nature and

character of the case. Further, the matter is still at the initial stage and trial has not yet commenced, however, it cannot be lost sight of the fact that defendant no.3 has been negligent in denying the averments and moreover he is verified his written statement, however, keeping in view the aforesaid facts and circumstances the application under Order 6 Rule 17 CPC seeking amendment in the written statement is allowed, subject to cost of Rs.3000/- to be deposited with DLSA by defendant no.3/applicant and receipt thereof be filed on the next date.

Amended written statement filed along with the application is taken on record.

Defendant no.1 has also moved an application under Order 8 Rule 1 CPC seeking condonation of delay in filing the written statement which was filed on 26.05.2017. The delay in filing the written statement is 30 days, thus, for the reasons mentioned in the application, the application is allowed. Written statement filed by defendant no.1 is taken on record.

Written statement on behalf of defendant no.2 is already on record.

After conferring with the counsels for the parties and parties, I see no element of settlement between the parties.

Pleadings in the present matter are complete. On the basis of the pleadings, following issues are framed as under :-

ISSUES

(i) Whether the plaintiff has sold the suit property i.e. plot bearing no.7 of area measuring 120 sq. yds. Khasra no.21/4 Block E, Nanhey Ram Park, Village Matiala, Delhi to defendant no.2 vide registered GPA, agreement to sale, affidavit, receipt of money, Will all dated 02.08.2000? OPD-1

(ii) Whether defendant no.2 is the bonafide purchaser of the suit property from its erstwhile owner against valid sale consideration amount? OPD-2

(iii) Whether the plaint does not disclose any cause of action against defendant no.3 in filing the present suit? OPD-3

(iv) Whether the plaintiff is entitled to decree of declaration thereby declaring registered GPA, registered Will agreement to sell, affidavit, receipt all dated 02.08.2000 with respect to the suit property as null and void? OPP

(v) Whether the plaintiff is entitled to decree of declaration thereby declaring registered GPA, registered Will agreement to sell, affidavit, receipt all dated 13.04.2010 with respect to the suit property as null and void? OPP

(vi) Whether the plaintiff is entitled to decree of declaration thereby declaring the plaintiff as owner of the suit property?OPP

(vii) Relief.

No other issue arises and is pressed for.

Put up for PE on 14.07.2017. Affidavit of all RPWs be filed on record in first go on the date fixed under advance

copy thereof to opposite party three days prior to next date. **Both parties are directed to file their respective list of witness within one week from today.** Date has been given as per convenience of both the parties and their respective counsels.

(Mohd. Farrukh)
ADJ(SW)/Pilot Court
Dwarka Courts/27.05.2017 (an)