IN THE HIGH COURT OF DELHI AT NEW DELHI

CM (M) 2309/05

Smt. Ravi Kanta Bansal .....Petitioner
! through: Mr. Anup Khullar, Adv.

VERSUS

$ Sh. Rakesh Aggarwal .....Respondent
^ through: Mr. D.K.Rustagi, Adv.

CM (M) 2637-38/05

Smt. Sangeeta Goel & Ors. .....Petitioner
! through: Mr. Valmiki Mehta, Sr. Adv. with
Mr. R.K.Chaudhary, Adv.

VERSUS

$ Smt. Ravi Kanta Bansal .....Respondent
^ through: Mr. Anup Khullar, Adv.

RESERVED ON : 12-01-2007

% **D**ATE OF DECISION: 29-01-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

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1. A common question arises for consideration in all above captioned petitions and therefore they are being decided by a common order.

2. Smt. Sangeeta Goyal and Smt. Bhanu Aggarwal are the petitioners in CM (M) No.2637-38/05.

3. Smt. Ravi Kanta Bansal and Sh. Rakesh Aggarwal are the respondents in said CM (M) No.2637-38/2005. The former is the lone contesting respondent. The latter supports the petitioners.

4. Smt. Ravi Kanta Bansal is the petitioner in CM (M) No.2309-05. Sh. Rakesh Aggarwal is the respondent in the said petition.

5. Smt. Sangeeta Goyal and Smt. Bhanu Aggarwal have challenged the order dated 17.8.2005 passed by Sh.Babu Lal, ADJ, Delhi rejecting their application under Order 6 Rule 17 CPC to amend the written statement filed by them. Smt. Ravi Kanta Bansal challenges the order dated 19.3.2004 passed by Sh. R.S.Arya, ADJ, Delhi allowing a similar application and the order dated 17.2.2005 dismissing

the review application which was filed seeking review of the order dated 19.3.2004.

6. The three orders were passed in the same suit and dealt with similar applications filed by different sets of defendants.

7. Smt. Ravi Kanta Bansal had filed a suit for ejectment of Sh. Rakesh Aggarwal, Smt. Pushpa Devi, Smt. Sangeeta Goyal and Smt. Bhanu Aggarwal.

8. She had alleged that the said 4 defendants were the successors in interest of late Sh. Jai Kishan Dass to whom she had let out a vacant plot of land forming part of plot no.69-A (renumbered as 1510), Wazir Nagar, Kotla, Mubarak Pur by and under a written lease deed dated 13.2.68.

9. She further alleged that under the deed, late Sh. Jai Kishan Dass, at his own expense, was permitted to put up a tin roofed structure for carrying on timber business. That the deed specifically recorded that the tin roof would be removed at the time of vacating the plot.

10. Written statements were filed by the defendants. Inter alia, a preliminary objection was raised to the

maintainability of the suit pleading that since the rent was less than Rs.3,500/- per month and what was let out was a premises, the suit was barred under Section 50 of the Delhi Rent Control Act, 1958.

11. In the written statement filed, vide preliminary objection No.2, it has been pleaded that the suit is barred under Section 50 of the Delhi Rent Control Act 1958 since the premises is covered by said Act. In reply to para 1 of the plaint, it is pleaded as under:-

> "1) Para "A" of the Plaint is not admitted. It is wrong to allege that the Plaintiff is a Senior Citizen of 60 years. It is wrong to allege that the Plaintiff in view of her age is facing difficulties. It is wrong to allege that there is no one to support the Plaintiff."

12. Identically worded applications were filed, one by defendant no.1 and the other by defendants 2 to 4, seeking to amend the written statement filed by the defendants to plead, inter alia, as under:-

> "B-(1) That the contents of para (1) of the Plaint are wrong and denied. It is wrong and denied that Late Shri Jai Kishan Dass, took on lease/rent a vacant plot of land. it is submitted that at the time of letting out the property in question to and in favour of Shri Jai Kishan Dass, the said premises were not vacant and were having a built-up super structure. It is submitted

> that prior to the creation of tenancy in favour of the predecessor of the replying defendants M/s Taj Motor Company were tenants in the premises on a monthly rent of Rs.110/-. With a view to save the super structure from the statutory authorities and taxes, the husband of the plaintiff procured the consent on a false premise that the suit property comprised of vacant land with provision of construction thereon. The said false premise was further repeated in the rent receipts issued in favour of the predecessor of interest of the plaintiff. There was no occasion for construction of the shed as it was already in existence and as being assessed as such by the Municipal Corporation of Delhi and the tax was being paid by the builder/owner of the shop. It is submitted that the property in question was let out for running the business of timber and the said business could not have been carried out without the construction and the structures on the property. It is further submitted that even otherwise the answering defendants vide disclaimer dated 12.7.2002 have disclaimed their rights with respect to the tenanted premises to and in favour of the defendant no.1 and as such the present suit is not maintainable against the answering defendants."

13. Surprisingly enough, identical defences raised by the defendants which were sought to be amended by identically worded applications for amendment have suffered to contradictory decisions.

14. Whereas, the application filed by Sh. Rakesh

Aggarwal impleaded as defendant no.1 has been allowed vide order dated 19.3.2004, review of which order has filed vide order dated 17.2.2005. Application filed by Pushpa Devi, Sangeeta Goyal and Bhanu Aggarwal has been dismissed vide order dated 17.8.2005.

15. Reason which has weighed with Sh. Babu Lal, learned ADJ who has passed the order dated 17.8.2005 is that in a proceeding under Section 27 of the Delhi Rent Control Act 1958, issue, whether under the lease deed a premises was demised or a vacant land was demised attained finality when the learned ARC did not grant permission to the predecessor in interest of the defendants to deposit rent in court, holding that what was demises was a vacant plot.

16. Sh. R.S.Arya, learned ADJ who has passed the order dated 19.3.2004 has taken a different view being that even admissions can be withdrawn, provided they were sufficiently explained.

17. Additional reason given by Sh. R.S.Arya, Additional District Judge is that the defendants were minors when their predecessor in interest executed the lease deed

and that admissions made by their predecessor in interest could not bind them.

18. Another reason given by Sh. R.S.Arya, Additional District Judge, Delhi is that the plaintiff herself, in cross examination, admitted that at the time of creation of the tenancy, there existed a pucca boundary wall on three sides, which walls were covered to form a room.

19. Needless to state, learned counsel for the parties conceded that if CM (M) No.2637-38/05 were to succeed, inevitable corollary would be the dismissal of CM (M) No.2309/05 and vice versa.

20. The law relating to amendment is well settled. If what is sought to be incorporated by way of amendments to the existing pleadings is necessary for a proper adjudication of the dispute between the parties, amendment has to be allowed. Further, if the proposed amendment is an elaboration of the pleas already taken, amendment has to be allowed. Further, if facts are stated to have come within the knowledge of a party after original pleading was filed, said fact can be permitted to be incorporated by way of an amendment. However, care has to be taken to insure that

contradictory case is not set up if amendment is allowed, contradiction being viz.-a.-viz. the original pleading. Further, nature of the suit and the defence should not ordinarily be allowed to be altered.

21. Inconvenience to the opposite party due to delay which would resulted in disposal of the suit if amendment is allowed can be recompensed by costs.

22. Commentaries under Order 6 Rule 17 show that thousands and thousands of opinions have been rendered by different judges from time to time. It would be a futile exercise to refer to the various authorities on the point for the reason, law pertaining to amendment is well settled. The decisions would only guide as to how in different set of circumstances, law has been applied.

23. A decision on facts can hardly be a precedent. At best, it can be used a guiding star.

24. I have briefly noted the defence set up in the original written statements filed. Categorically defence has been taken that the suit is barred under Section 50 of the Delhi Rent Control Act 1958.

25. Proposed amendment seeks to additionally plead

that prior to the tenancy in question when Taj Motors Company was a tenant, a structure existed evidenced by the fact that property was assessed to property tax by the Municipal Corporation of Delhi, not as a vacant plot, but as built upon.

26. One of the latest decisions on the point of amendment is the opinion of the Supreme Court reported as (2006) 6 SCC 498 *Baldev Singh & Ors. Vs. Manohar Singh & Anr.*. Overruling the opinion of the High Court that the amendment prayed for could not be allowed, after noting various authorities, Supreme Court allowed the amendment.

27. Facts as originally pleaded by the defendant and as proposed to be amended are set out in para 4 of the report. The same reads as under:-

> "4. The case set up by the plaintiff-Respondent 1 was that the sale deeds executed on 24-6-1968 and 25-6-1968 in the names of his parents were benami transactions and the plaintiff- Respondent 1 was the real owner of the same as his parents had no money to pay the consideration money of the suit property and that the sale deeds were executed pursuant to an oral agreement to sell which was entered into only by the plaintiff-Respondent 1. The appellants entered appearance and filed their written

> statement, inter alia, denying that there was any agreement to sell the suit property or that the suit property was owned and possessed by the plaintiff-Respondent 1. It has also been pleaded in the written statement that the defendant-Appellant 1 is the actual owner and in possession of the suit property because he was residing in India continuously in Village Bhin without any interruption from any one whereas the plaintiff is residing permanently in Canada. During the pendency of the suit, an application for amendment of the written statement was filed by the appellants seeking its amendment in which it was alleged that the suit was barred by limitation and that the plaintiff-Respondent 1 had no money to pay the sale price of the suit property, and that the father of the parties, who was serving as a Foreman in the Central Government and their mother had sufficient income to pay the sale price of the suit property and on the death of their parents the names of the plaintiff and the defendants have been mutated in equal shares in respect of the suit property. Accordingly, the defendant-appellants sought for amendment of the written statement in the manner indicated hereinearlier. It was further pleaded in the application for amendment of the written statement that the amendment sought for was in fact an elaboration of the case made out in the written statement. The High Court as well as the trial court rejected the application for amendment of the written statement."

28. Noting in para 8 that it was well settled law that courts should be extremely liberal in granting prayers for

amendment unless serious injustice or irreparable loss is caused to the other side, it was opined that rules are intended to secure a proper administration of justice and therefore, it is essential that rules are subordinate to the main purpose and full power of amendment must be enjoyed liberally. Only care to be taken, is that one distinct cause of action cannot be substituted by another nor subject matter of the suit is changed.

29. In para 9 of the report, it was observed as under:-

> "..... However, the court may allow amendment if it is satisfied that in spit of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to Order 6 Rule 17 of the Code of Civil Procedure is concerned, we shall deal with it later."

30. Objection to the proposed amendment on various grounds was noted in para 11 of the report as under:-

> "11. A bare perusal of the order rejecting the application for amendment of the written statement indicates that while rejecting the application for amendment of the written statement, the High Court as well as the trial court based their decisions mainly on three grounds. The first ground was that since the appellants had made certain admissions in the written statement, its amendment cannot be allowed permitting the appellants to

withdraw their admission made in the same. Secondly, the question of limitation cannot be allowed to be raised by way of an amendment of the written statement and lastly, inconsistent pleas in the written statement cannot also be allowed to be raised by seeking its amendment."

31. In para 14, inter alia, following was observed:-

" ..... It is true that in the original written statement, a statement has been made that it is Defendant-Appellant 1 who is the owner and is in continuous possession of the suit property, but in our view, the powers of the court are wide enough to permit amendment of the written statement by incorporating an alternative plea of ownership in the application for amendment of the written statement. That apart, in our view, the facts stated in the application for amendment were in fact an elaboration of the defence case. Accordingly, we are of the view that the High Court as well as the trial court had erred in rejecting the application for amendment of the written statement on the ground that in the even such amendment was allowed, it would take away some admissions made by the defendant-appellants in their written statement. That apart, in Estralla Rubber Vs. Dass Estate (P) Ltd. this court held that even if there were some admissions in the evidence as well as in the written statement, it was still open to the parties to explain the same by way of filing an application for amendment of the written statement. That apart, mere delay of three years in filing the application for amendment of the written statement could not be a ground for rejection of the same

> when no serious prejudice is shown to have been caused to the plaintiff-Respondent 1 so as to take away any accrued right."

32. In para 15, inter alia, following was observed:-

> "15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the trial court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken.....
>
> That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle.....
>
> Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."

33. Tested on the aforenoted principles and observations, the amendments sought have to be allowed for the reason, what is sought to be incorporated by way of amendments to the written statements are the elaboration of the same defence which was taken. Only thing which is sought to be highlighted is the levy of property taxes by the

Municipal Corporation of Delhi pertaining to the super structure on the land in question and not levy of vacant land tax, as also letting of the premises to a previous tenant.

34. CM (M) No.2637-38/2005 is allowed. Order dated 17.8.2005 passed by Sh.Babu Lal, ADJ, Delhi is set aside. Amendment sought by defendants 2 to 4 is allowed.

35. CM (M) No.2309/05 is dismissed.

36. No costs.

January 29, 2007 PRADEEP NANDRAJOG, J.
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