A OLYMPIC INDUSTRIES

v.

MULLA HUSSAINY BHAI MULLA AKBERALLY & ORS.

(Civil Appeal Nos. 4148-4149 of 2009)

JULY 7, 2009

B

[TARUN CHATTERJEE AND H.L. DATTU, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

C *Or.8, r.9 – Subsequent pleadings – Additional written statement – Held: Even by filing an amendment or additional written statement, it is open to defendant to add a new ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the written statement so long as the* D *pleadings do not result in causing grave injuries/irretrievable prejudice to plaintiff – Mere delay is not sufficient to refuse amendment of pleadings or an additional written statement – High Court was not justified in rejecting tenant's application for permission to file additional written statement, as no* E *prejudice could be caused to landlord which would otherwise be compensated in terms of cost – Order of High Court set aside and that of tribunals below allowing to file additional WS is restored – Additional WS field by tenant be accepted – Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 – s.25.*

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TAMIL NADU BUILDINGS (LEASE AND RENT) CONTROL Act, 1960:

s.25 – Revisional jurisdiction of High Court – Filing of G *additional written statement allowed by Rent Controller and Appellate Tribunal – Order reversed by High Court – Held: In absence of any perversity or arbitratriness in the concurrent orders of the tribunals below, it was not open to High Court to interfere with the same – Code of Civil Procedure, 1908 – Or.8, r.9.*

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In a petition by landlord-respondents seeking fixation of fair rent, the tenant-appellant moved an application for permission to file an additional written statement. The Rent Controller allowed the application. The Appellate Tribunal upheld the order. However, the High Court, in the revision petition filed by the landlord, set aside the concurrent orders of the tribunals below and rejected the tenant's application on the grounds that the tenant filed the application belatedly when the examination of PW1 had already been over; and that in the additional WS a new plea was raised, which was a fundamental alteration of the pleadings already put forth in the WS.

Allowing the appeals of the tenant, the Court

HELD: 1.1. Mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional written statement under Order 8 Rule 9 of the Code of Civil Procedure, 1908 where no prejudice was caused to the party opposing such amendment or acceptance of additional written statement which could easily be compensated by cost. That apart, the delay in filing the additional written statement has been properly explained by the appellant. Even if the examination of PW-1 or his cross-examination was over, then also, it was open to the court to accept the additional written statement filed by the appellant by awarding some cost against the appellant. [Para 7] [343-G-H; 344-A-B; 345-H; 346-A]

1.2. Even by filing an amendment or additional written statement, it is open to the defendant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the written statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. [Para 7] [344-G-H; 345-A]

A *Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.* (2007) 5 SCC 602, relied on.

1.3. It is well settled that courts should be more generous in allowing the amendment of written statement than in the case of plaint. While allowing additional written statement or refusing to accept the same, the court should only see that if such additional written statement is not accepted, the real controversy between the parties could not be decided. In the instant case, by filing additional written statement, no injustice/prejudice would be caused to the respondents, but that would help the court to decide the real controversy between the parties. [Para 7] [346-A-C]

2.1. The High Court in exercise of its revisional jurisdiction u/s 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, could interfere with the concurrent orders of the tribunals below only if it finds that the findings of the tribunals below were either perverse or arbitrary, irregular or improper; but it was not so in the instant case. [Para 8] [346-E-F]

2.2. The High Court was also not justified in interferering with the concurrent orders of the tribunals below, as they on consideration of the written statement as well as the additional written statement and the application for fixation of rent and other materials on record, accepted the written statement in their discretion and, therefore, it was not open to the High Court to interfere with the same in the absence of any perversity or arbitrariness in such findings of the tribunals below. [Para 8] [346-F-H; 347-A]

Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors. (2007) 5 SCC 602, relied on.

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3. The High Court was not justified in passing the impugned order and in rejecting the prayer for acceptance of the additional written statement filed on behalf of the appellant. However, such application must be allowed subject to deposit of cost which is assessed at Rs.10,000/-. The impugned order of the High Court is set aside and that of the tribunals below are restored. The additional written statement filed by the appellant be accepted subject to deposit of cost. [Paras 9 and 10] [347-A-E]

Case Law Reference :

(2007) 5 SCC 602 relied on Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4148-4149 of 2009.

From the Judgment & Order dated 15.02.2007 of the High Court of Judicature at Madras in C.R.P. (NPD) No. 207 of 202 and C.M.P. No. 2249 of 2002.

P.V. Dinesh and Jojo Jose for the Appellants.

P.B. Suresh and Vipin Nair (for Temple Law Firm) for the Respondents.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

2. These appeals are directed against the judgment and order dated 15th of February, 2007 passed by a learned Judge of the High Court of Judicature at Madras in CRP (NPD) No.207 of 2002 and CMP No.2249 of 2002, by which in the exercise of its revisional power, the High Court had rejected the application for permission to file additional counter statement.

A 3. The brief facts necessitated for the disposal of these appeals are as follows :

The appellant became tenant under the respondents in respect of a portion of premises bearing Door No.37, West Mada Church Street, Royapuram, Chennai-13 for non B residential purposes at a monthly rental of Rs.750/-. Seeking fixation of fair rent at Rs.10,177/- per month, the landlord/ respondents filed a petition before the XIIth Judge of the Small Causes Court at Chennai. The fair rent was sought for on the calculation of cost of construction of Madras Terraced Building C (960 sq. ft) and Zinc Roofed Building (390 sq. ft) and market value of the land. In the said application for fixation of fair rent, the appellant filed his counter statement contending that the monthly rent of Rs.750/- being paid by the appellant was the fair rent and could be fixed as fair rent or alternatively to fix the D fair rent according to the report of the Engineer appointed for that purpose.

4. Trial commenced and P.W.1 was examined. At this stage, the appellant filed an application seeking permission E before the Rent Controller to file additional counter statement raising a plea that the appellant was the tenant of the land alone in respect of the portion of tenanted premises to the extent of about 600 sq. ft. In the additional counter statement, the appellant also raised a plea that the appellant-Olympic F Industries is only a lessee of the land measuring about 5600 sq. ft. and lessee of the room measuring 400 sq. ft. in the main building.

5. This application for acceptance of additional counter statement was resisted by the respondents alleging that the G additional counter statement containing new and inconsistent plea raised by the appellant at the belated stage, more particularly, after completion of examination of witnesses, could not be allowed as that it would cause serious prejudice to the respondents. The Rent Controller allowed the said application, H inter alia, on a finding that opportunity must be given to the

appellant to put forth his additional defence. Feeling aggrieved, the respondents preferred an appeal before the Appellate Authority which also accepted the additional counter statement, inter alia, on a finding that when the existence of the lease was admitted, the party, that is the appellant, can file such additional counter statement. The Appellate Authority also took the view while accepting the additional counter statement that the averments in the additional counter statement would not alter the position of the parties and that the respondents would have sufficient opportunity to challenge the averments in the additional counter statement. In revision, the High Court had set aside the concurrent orders of the Rent Control Authority and rejected the application for acceptance of additional counter statement filed by the appellant.

6. It is this order which is under challenge before us which, on grant of leave, was heard in the presence of the learned counsel for the parties.

7. Having heard the learned counsel for the parties and after going through the additional counter statement as well as the original counter statement and the application for fixation of fair rent and other materials on record, we are of the view that the High Court was not justified in interfering with the concurrent orders of the Rent Control Authorities in the exercise of its revisional power. A plain reading of the impugned order of the High Court would show that two grounds were given by the High Court to reject the application for acceptance of the additional counter statement filed by the appellant. The first ground was that the appellant had filed a belated application for acceptance of an additional counter statement when examination of P.W.1 was already over. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter statement. At the same time, delay is no ground for dismissal

A of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost. That apart, the delay in filing the additional counter statement has B been properly explained by the appellant. The averments made in the additional counter statement could not be raised by the appellant earlier since the appellant was under the impression that the lease agreement was destroyed in a fire accident and that he incidentally discovered the lease files in an old trunk only C in October 1996 while he was cleaning the house for Pooja celebration. This explanation, in our view, cannot be rejected. Therefore, the first ground on which the additional counter statement sought to be rejected by the High Court in the exercise of its revisional power, in our view, cannot be D sustained. The second ground on which the High Court had interfered with the concurrent orders of the tribunal below in accepting the additional counter statement was that a new plea was raised in the same in respect of which there was no slightest basis in the original counter statement filed by the appellant. According to the High Court, the plea that vacant land E was let out to the appellant is a fundamental alteration of the pleadings already put forth by the appellant and the appellant cannot be permitted to introduce totally a new case. The additional counter statement alleging that there was written agreement and that the appellant is only a lessee of vacant site F introduces totally a new case which would totally displace the landlord. The High Court held that such a new plea cannot be permitted to be taken by permitting the appellant to file additional counter statement. In our view, this is also not a ground for which the High Court could interfere with the G concurrent orders of the Rent Control Tribunal and reject the application for permission to file additional counter statement. In our view, even by filing an amendment or additional counter statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking H inconsistent pleas in the counter statement as long as the

pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. [See : *Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.* (2007) 5 SCC 602]. Therefore, we are unable to agree with the High Court on this ground as well. It is also well settled that the courts should be more generous in allowing the amendment of the counter statement of the defendant then in the case of plaint. The High Court in its impugned order has also observed that in order to file an additional counter statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter statement was rejected by the High Court on the ground that while allowing such additional counter statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage. As noted herein earlier, the only ground on which the High Court had rejected the acceptance of the additional counter statement was (i) by filing of such additional counter statement, the appellant was introducing a new case and (2) the entire trial was to be reopened causing great prejudice to the respondents whose examination was completed. It was also observed by the High Court that the appellant cannot be able to take such inconsistent plea by filing additional counter statement after cross-examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated by cost. As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter statement the reasons for taking such new plea, viz., he could trace out the lease deed pertaining to the lease only when he was cleaning the boxes. The respondents have also not disputed as to the existence of the lease deed only they are disputing the filing of the additional counter statement at such a belated stage. This being the position, we are of the view that even if the

A examination of PW-1 or his cross- examination was over, then also, it was open to the court to accept the additional counter statement filed by the appellant by awarding some cost against the appellant. It is also well settled that while allowing additional counter statement or refusing to accept the same, the court B should only see that if such additional counter statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would C help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms D of cost.

8. There is another aspect of the matter. It is well settled that the High Court in the exercise of its revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, could interfere with the concurrent orders of the E tribunals below only if it finds that the findings of the tribunals below were either perverse or arbitrary, irregular or improper, but if the High Court finds that the findings of the tribunals below are based on correct application of the principles and in any way cannot be said to have acted illegally and with material F irregularity, in that case it cannot be said that the High Court was entitled to interfere with the concurrent orders passed by the tribunals below in accepting the application for additional counter statement filed by the appellants. In our view, the High Court was also not justified to interfere with the concurrent G orders of the tribunals below, as we find that the tribunals below, on consideration of the counter statement as well as the additional counter statement and the application for fixation of rent and other materials on record, accepted the counter statement in its discretion and, therefore, it was not open to the H High Court to interfere with the same in the absence of any

perversity or arbitrariness in such findings of the tribunals below. [See *Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.* (2007) 5 SCC 602].

9. Accordingly, we are of the view that the High Court was not justified in passing the impugned order and in rejecting the prayer for acceptance of the additional counter statement filed on behalf of the appellant. However, such application must be allowed subject to deposit of cost which is assessed at Rs.10,000/-. Such cost must be paid or deposited in the Small Causes Court, Chennai in the name of the respondent within two months from the date of supply of a copy of this order to the Small Causes Court, Chennai and in default of deposit of the aforesaid amount within the time specified herein above, the additional counter statement filed by the appellant shall stand automatically rejected. The respondent shall be entitled to withdraw the aforesaid sum of Rs.10,000/- from the Court of Small Causes, Chennai without prejudice to his rights and contentions in the original case.

10. For the reasons aforesaid, the impugned order of the High Court is set aside and that of the tribunals below are restored. The additional counter statement filed by the appellant be accepted.

11. For the reasons aforesaid, the appeals are allowed to the extent indicated above. There will be no order as to costs.

R.P. Appeals allowed.