B.K.N. PILLAI

v.

P. PILLAI AND ANR.

DECEMBER 13, 1999

[S.P. KURDUKAR AND R.P. SETHI, JJ.]

Civil Procedure Code, 1908—Order 6 Rule 17—Pleadings—Amendment of—All amendments of 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 defence taken—In such cases court should not adopt hypertechnical approach.

Respondent/plaintiff filed suit against appellant/defendant seeking his eviction on the ground that he was a licensee. Appellant/defendant pleaded in his written statement that he was not a licensee but a lessee, but after a prolonged delay he filed an application for amendment of the written statement, seeking to incorporate the plea that in case he is not held lessee, he was entitled to the benefit of Section 60(b) of Indian Easement Act, 1882 according to which his licence cannot be revoked by the grantor.

The trial court, and in appeal, the high Court, rejected the plea on the ground that the proposed amendment amounted to withdrawal of the statement made in the written statement.

Allowing the appeals, this Court

HELD : 1. The finding of the High Court that the proposed amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent, cannot be agreed to. The plea sought to be raised is neither inconsistent nor repugnant to the pleas already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the pleas of the respondent/plaintiff and rebuttal to the issue framed regarding liability of the appellant of being dispossessed on proof of the fact that he was a licensee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application

A after a prolonged delay could not be made a ground for rejecting his prayer particularly when the respondent/plaintiff could be compensated by costs. [276-E; 276-C-E]

2.1. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as B may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should C be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleading to avoid uncalled for multiplicity of litigation. [273-G-H; 274-A]

D *A.K. Gupta & Sons* v. *Damodar Valley Corporation,* [1966] 1 SCR 796; *Smt. Ganga Bai* v. *Vijay Kumar and Ors.,* [1974] 2 SCC 393 and *Ganesh Trading Company* v. *Moji Ram,* [1978] 2 SCC 91, referred to.

2.2. The principles applicable to the amendments to the plaint are equally E applicable to the amendments of the written statement. 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 defence which is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments F 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 defence 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 G the pleadings. Proposed amendment should not cause such prejudice to the other side which can not 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 petition for amendment of the pleadings should be properly compensated by costs and H error or mistake which, if not fraudulent, should not be made a ground for

rejecting the application for amendment of plaint or written statement. A
[275-F-H; 276-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7222-23 of 1999.

From the Judgment Order dated 28.7.99 in CRP No. 1251/99 & 1252/99 B of the High Court of Kerala at Ernakulam.

T.L. Vishwanatha Iyer, S. Balakrishnan, K.L. Rathee, Subramonium Prasad, M.R. Rajendran Nair, K.M.K. Nair and Vipin Nair for the appearing parties.

The Judgment of the Court was delivered by

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SETHI, J. Leave granted. Heard.

The respondent-plaintiff filed a suit against the appellant-defendant praying for the grant of mandatory and prohibitory injunction seeking eviction allegedly on the ground of his being a licensee. In the written statement filed the appellant herein pleaded that he was not a licensee but a lessee. During D the trial of the suit the appellant filed an application for amendment of the written statement to incorporate an alternative plea that in case the court found that the defendant was a licensee, he was not liable to be evicted as according to him the licence was irrevocable. He further wanted to add a plea that first and second prayers in the plaint were barred by limitation and that as acting upon the licence he has executed works of permanent nature and E incurred expenses in execution of the same his licence cannot be revoked by the grantor under Section 60(b) of the Indian Eastements Act, 1882. The prayer was rejected by the Trial Court as also by the High Court on the ground that the proposed amendment, was mutually destructive which, if allowed, would amount to permitting the defendant to withdraw the admission F allegedly made by him in the main written statement.

The-purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of G guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to H

A hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

This Court in *A.K. Gupta & Sons* v. *Damodar Valley Corporation,* [1966] 1 SCR 796 held :

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"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new case or cause of action is barred: *Weldon* v. *Neale,* (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a C different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das* v. *Amir Khan,* AIR (1921) PC 50 and *L.J. Leach and Company Limited and another* v. *Jardine Skinner and Company,* [1957] SCR 433.

D The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper* v. *Smith,* (1884) 26 Ch.D. 700) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already E in the pleading sought to be amended in *Kishandas Rupchand* v. *Rachappa Vithoba,* (1909) ILR 33 Bom. 644 approved in *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil,* [1957] SCR 595.

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to F succeed' as was said in *Cooke* v. *Gill,* (1873) 8 CP 107, in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by G new facts. Such a view was taken in *Robinson* v. *Unicos Property Corporation Limited,* (1962) 2 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Doman* v. *J.W. Ellis and Company Limited,* (1962) 1 All ER 303. This also seems to us to be a reasonable view to take. No amendment H will be allowed to introduce a new set of ideas to the prejudice of any

right acquired by any party by lapse of time." A

Again in *Smt.Ganga Bai* v. *Vijay Kumar & Ors.*, [1974] 2 SCC 393 this Court held:

> "The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law B 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."

In *M/s. Ganesh Trading Company* v. *Moji Ram,* [1978] 2 SCC 91 it was C held:-

> "It is clear from the foregoing summary of the main rules of pleadings and provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for D promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the short coming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is E not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

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 F is less likely to operate in that event. The defendant has a right to take alternative plea in defence 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 favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for G 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 defence 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. Proposed amendment H

A should not cause such prejudice to the other side which can not 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 petition 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 B amendment of plaint or written statement.

In the appeals the appellant-defendant wanted to amend the written statement by taking a plea that in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Eastements Act, 1882. Learned C counsel for the appellant is not interested in incorporation of the other pleas raised in the application seeking amendment. The plea sought to be raised is neither inconsistent nor repugnant to the pleas already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the plea of the respondent- plaintiff and rebuttal to the issue framed regarding liability of the appellant of being dispossessed on proof of D the fact that he was a licensee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application after a prolonged delay could not be made a ground for rejecting his prayer particularly when the respondent-plaintiff could be compensated by costs. We do not agree with the finding of the High Court that the proposed E amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent.

It has been stated on behalf of the respondent at the Bar that the appellant having not come to the court with clean hands is not entitled to any F discretionary relief. It is contended that the appellant has not paid any licence fee as per the terms of the additional licence granted in his favour. It has been stated that in case the appeals are allowed the appellant-defendant be directed to pay all the arrears of the licence fee. We find substance in the submission made on behalf of the respondents.

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Under the circumstances, the appeals are allowed by setting aside the orders impugned. The appellant-defendant is permitted to amend the written statement to the extent of incorporating the plea of his entitlement to the benefit of Section 60(b) of the Indian Easements Act, 1882 only subject to his paying all the arrears on account of licence fee and costs assessed at Rs. H 3,000 within a period of one month from the date the parties appear in the Trial

Court. The payment and receipt of the arrears of licence fee shall be without prejudice to the rights of the parties which may be adjudicated by the trial court. Costs of the appeals are made easy. A

K.K.T. Appeals allowed.