

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

C. M. (M) 1186/2011

Date of Decision: 21.12.2012

NATHU SWEETS

.....Petitioner

Through: Mr. Sunil Mittal, Adv.

Versus

SARVESH CHAND GUPTA

.....Respondent

Through: Mr. P.K. Rawal & Mr. Ajay Bahl, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Article 227 of the Constitution of India, challenging the order dated 08.06.2011, passed by the Ld. Senior Civil Judge cum Rent Controller, Patiala House Courts, Delhi, whereby an application under Order VI Rule 17 read with Sec 151 of the Civil Procedure Code (for short "the Code") was rejected.

2. The facts leading to the passing of the impugned order are as under. The petitioner was a tenant since the year 1939, under the respondent landlord, with respect to properties bearing nos. 23, 24, and 25 and residential Qr. No 62 and 63 situated in plot no. 3, block no. 205-C, Bengali Mal Market, New Delhi (hereinafter referred to as "the suit property"). The respondent was a perpetual sub-lessee under the Land and Development Office (for short "the L&DO"). An eviction petition was filed by the respondent u/S 14 (1) (a) (j) and (k) of the Delhi Rent Control Act (for short "the Act") on the ground that the petitioner has defaulted in the payment of rent and that they have also raised illegal constructions on the suit property. The petitioner decided to contest the eviction petition and filed a written statement. After filing of the written statement, the petitioner filed an application u/O 6 Rule 17 of the

Code in order to incorporate certain subsequent events that came to the knowledge of the petitioner. It was learnt by the petitioner that the suit property has been reentered by the L&DO on 27.11.1974 vide letter No. L.1/9205/SP.3/75 dated 25.05.1975, as the perpetual lease deed granted by the L&DO to the respondents had been cancelled. The petitioner also came to know of the fact that the suit property was currently vested with the NDMC vide a notice dated 31.05.2007, that was sent by the department to the petitioner and others at Bengali Market, informing that vide notification dated 24.03.2006, certain properties (including the suit property) have been vested in the NDMC. The petitioner applied to the NDMC under the Right to Information Act and the NDMC, vide reply No. D/SO(STC)/629/2007, dated 17.09.2007, informed that possession of Bengali market was taken in April, 2007 on an 'as is where is basis'. As a consequence of this, the respondent allegedly no longer owned the suit property and the petitioner was now under the tenancy of NDMC. The petitioner in furtherance of the same deposited rent with the NDMC for the period 1.11.2004 to 31.08.2008 on 06.08.2007 by cheque.

3. Under the said application, changes were sought to be made in paragraph 3[a] of the written statement as the same has been wrongly typed as "The petitioner is not only the owner/landlord" instead of "the petitioner is not the only owner/landlord". In addition, amendments were also to be made in paragraphs no. 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the written statement to the effect that the ownership of the suit property now vested with the NDMC and that the respondent had no longer any right or interest in the same.

4. The respondent filed a reply to the said application, taking up preliminary objections that the application was not maintainable and that the same was filed in order to delay the proceedings. It was further contended that the petitioner had illegally demolished the internal walls of the suit property, thereby changing the entire tenanted premises. In addition, the respondent submitted that illegal constructions were carried out on the upper floors. The respondent alleged connivance on the part of the petitioners with the L&DO and the NDMC because of which no legal action was taken for the petitioner's acts and conduct. The respondent brought attention to the terms of the perpetual lease deed, in which it was agreed that if there is any unauthorized construction being raised, then the officials of the L&DO have a right to enter into the premises and remove or demolish the same. Further, the respondent submitted that since the petitioner was a tenant under the

respondent, the same cannot be controverted at this stage, as it was barred u/S 116 of the Indian Evidence Act.

5. In the submissions before the Ld. RC, the Ld. Counsel for the petitioner brought the attention of the Court to the judgment in *D. Satyanarayana v. P. Jagdish*, (1987) 4 SCC 424 wherein an exception to the rule of estoppel, operating against a tenant with respect to the title of the landlord, was spelled out. The relevant portions of the judgment can be noted as under:-

“4.....that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment.”

6. By further relying on the notice sent by the NDMC and other documents filed on the petitioner's behalf, the Ld. counsel for the petitioner submitted that since the knowledge of the changed circumstances had come to the notice of the petitioner subsequent to the filing of the written statement, the sought amendments to the written statement needed to be made as so as to lead to the proper adjudication of the case.

7. Per contra, the counsel for the respondent submitted a number of judgments including those of *Smt. Shanti Sharma & Ors. v. Smt. Ved Prabha & Ors*, AIR 1987 SC 2028; *Brij Lal Sharma v. Kanhiya Lal & Ors*, 2008 VIII AD (Delhi) 321, to contend that there existed a relationship of landlord tenant and that the same could not be denied at the present stage due to the bar imposed by the rule of estoppel u/S 116 of the Indian Evidence Act.

8. The Ld. RC, on hearing the counsels for the parties held that by the proposed amendment, the petitioner intended to deny the fact that the respondent was the landlord. The Ld RC observed that the letter dated 25.05.1975, sent by the L&DO to the predecessor in interest of the respondent regarding re-entry was not carried out, meaning thereby that the possession was not taken by the L&DO. In light of the above, he came to the

conclusion that technically the possession was still with the respondent. By placing his reliance on the judgments of Smt. Shanti Sharma & Ors. v. Smt. Ved Prabha & Ors, (Supra) and Brij Lal Sharma v. Kanhiya Lal & Ors, (Supra), the Ld. RC disallowed the application under Order 6 Rule 17 of the Code vide order dated 08.06.2011. The said order is under challenge in the present petition.

9. I have heard the Ld. Counsels for the parties and have examined the impugned order and other documents places on record.

10. Before advertng to the facts in the present petition, attention has to be brought to the object behind the rule u/O 6 Rule 17. The same was clearly laid down in the case of Rajesh Kumar Aggarwal v. K.K Modi, (2006) 4 SCC 385, wherein the Apex Court held that the courts should try cases that come before it on merits, because of which, any amendment sought to be made, that is necessary for determining the real question between the parties, should be allowed provided that it does not cause injustice to the other party. It was further held as under:-

“18. the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused.....It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

11. Now coming to the case at hand, the real dispute between the parties is an eviction petition filed by the respondent u/S 14 (1) (a), (j) and (k) of the Act. The petitioner required the written statement to be amended to the effect that firstly, the L&DO had re-entered the suit property vide letter dated 25.05.1975 and secondly that the ownership currently vested in the NDMC vide letter dated 31.05.2007. By the said amendments, the plea is sought to be taken as regards the ownership of the suit property by the respondent, after the letting and filing of eviction petition. Though it is settled law that the ownership of the landlord cannot be disputed by the tenant due to the operation of the rule of estoppel, that is a question that needs to be decided at a later stage and not at the stage of granting an amendment of the pleadings. The Ld. RC has unnecessarily gone into the merits of the case and decided in favour of the respondent that as per the applicability of Section 116 of the Indian Evidence Act, the petitioner is estopped from questioning the title of the respondent. No doubt the

amendment which seeks to displace the plaintiffs completely from the admissions made in the written statement cannot be allowed, but the sought amendment nowhere withdraws the admission that the respondent was the owner/landlord. It only seeks to place on record subsequent events of NDMC claiming to be the owner. Whether such a claim of NDMC was valid or not and further whether it would impact the cause of action of initiation of eviction proceedings by the respondent is not required to be gone into at this stage of consideration of the application for amendment. It is not that the petitioner was seeking to deny the title of the respondent at the beginning of the tenancy or the initiation of the eviction petition. Such an amendment certainly could not be allowed. It was held in the case of *Rajesh Kumar Aggarwal v. K.K Modi*, (supra), that the court should not go in the merits of the case while allowing or refusing an application u/O 6 Rule 17. The relevant portions of the judgment are as under:-

“19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.”

12. Further, in the case of *Om Prakash Gupta v. Ranbir B. Goyal*, (2002) 2 SCC 256, the Supreme court has categorized subsequent events into two kinds. One being that of law and the other being that of fact. With regard to the former, the court would take notice of the subsequent event and before acting upon the same, should inform the parties as to how that event would change the rights and reliefs obtained by the parties. On a subsequent event based on fact however, the party seeking to incorporate the same has a resort by applying u/O 6 Rule 17. As the present case deals with subsequent events based on facts, the petitioner has a route u/O 6 Rule 7 of the Code to bring those subsequent events on record. Courts while deciding whether to allow or disallow an amendment to the pleadings have to have into account certain factors.

13. It is also settled law that the discretion is left to the courts while granting an application u/O 6 Rule 17, but at the same time, those amendments that are bonafide, legitimate, honest and necessary should not be refused. The Ld. RC seems to have overlooked the principles governing amendment of pleading and taken to deal the application affecting the merits of the case.

14. In light of the factual matrix and the legal principles applicable to them, as discussed above, I feel that the Ld. RC has erred in refusing to grant the application u/O 6 Rule 17. The petition is thus allowed.

Sd/-
M.L. MEHTA, J.

DECEMBER 21, 2012