

In the High Court At Calcutta  
Civil Revisional Jurisdiction

Present:

The Hon'ble Mr. Justice Ashoke Kumar Dasadhikari

C.O. No. 2918 of 2014

Indian Oil Corporation Ltd.

vs.

Sri Ram Mirchandani

Ms. Vineeta Meharia

Mr. Amit Kumar Nag

Mr. Soumava Ghosh

... for the petitioner.

Mr. Aniruddha Chatterjee

... for the opposite party

Heard on: 3.3.2015, 10.3.2015 and 12.3.2015

Judgment on: 13.3.2015

**Ashoke Kumar Dasadhikari, J:-**

This revisional application is moved by the defendant, Indian Oil Corporation in short 'IOC' against the impugned Order No.60 dated 9<sup>th</sup> July, 2014 passed by the learned Judge, Fifth Bench, Presidency Small Causes Court, Kolkata on an application for amendment of their written statement filed in Ejectment Suit No.43 of 2005 instituted by Sri Ram Mirchandani being the absolute owner in respect of flat No.2C, Everest Building, 46C, Chowringhee Road now known as Jaharlal Nehru Road, Calcutta-700 071. By the order impugned the learned Court below rejected the application under Order VI Rule 17 of Code of Civil Procedure filed by the defendant on 23<sup>rd</sup> April, 2014.

The opposite party in this revisional application being the plaintiff instituted an eviction suit No.43 of 2005 for eviction of the defendant (I.O.C.) on the ground that the defendant committed default for payment of monthly rent in respect of aforesaid tenancy from the month of April, 2004, for causing nuisance in suit premises, subletting a part of portion of the tenanted premises to one Petroleum Conservation Research Association (in short 'PCRA') in violation of provisions under West Bengal Premises Tenancy Act, 1997. Tenancy of the defendant/opposite party is also determined by notice to quit.

The defendant, I.O.C., entered appearance through their learned Advocate and filed their written statement and the ground for eviction taken in sub-para (c) of paragraph 3 was dealt with by them with a denial to the effect that there is no subletting of the premises or any portion thereof, nor the defendant violated any provision of the West Bengal Premises Tenancy Act, 1997. It was also specifically denied that the premises was never sublet to PCRA as alleged. It was stated that PCRA never paid any rent to the defendant and as such, cannot be said to be a sub-tenant of the defendant. It was also stated that the plaintiff deliberately tried to make out a false and misleading case alleging wrongful subletting. It was further stated that the defendant is a member of PCRA which is a body corporate constituted by Ministry of Petroleum and Natural Gases, Government of India and as such, from the very beginning of the tenancy, the defendant used the said premises also to carry out PCRA's work since both of them are under the

same Ministry. In any event, the landlady of the said premises has been aware of the fact at all materials times and has acquiesced of such use of the premises, etc. After completion of all required formalities and framing of issues, trial of the eviction suit was started.

At this stage, the defendant filed an application under Order 6 Rule 17 of Code of Civil Procedure for amending the written statement. The defendant wanted to add that the defendant had also been occupying the unit No.2A, 2B, 2D and 2E apart from unit No.2C of Everest House. Since the defendant is the Board member of PCRA, an organisation under Ministry of Petroleum and Natural Gas, the defendant had been doing some activities of PCRA from unit No.2A and 2B of Everest House during relevant point of time. It was also within the knowledge of the Administrator of Everest House appointed by the Hon'ble High Court at Calcutta that activities of PCRA had been carried out from unit No.2A and 2B of Everest House. The defendant also stated that the defendant has been occupying unit No.2C and at the relevant point of time, Assam Oil division of the defendant was functioning from the unit No.2C of Everest House. The defendant also wanted to strike off the following statements from their written statement:-

*“The said PCRA has never paid any rent to the defendant and cannot be said to be a sub-tenant of the defendant. It so happens that the defendant is a member of PCRA which is a body constituted by Ministry of Petroleum and Natural Gases, Government of India, as such, from the beginning of the tenancy the defendant used the said*

*premises also to carry out PCRA work, since both of them are under the same Ministry. In any event, the landlady of the said premises has been aware of the same at all material times and has acquiesced to such use of the premises.”*

Defendant’s application for amendment of written statement was contested by the plaintiff by filing a written objection. The plaintiff mainly sought for rejection of amendment of the written statement on the ground that defendant cannot resile from their admission of having subletting the suit property in favour of PCRA and since the proposed amendment introduce a different case than what was stated in the original written statement, etc.

Learned Judge, Fifth Bench, Presidency Small Causes Court, Kolkata, rejected the application for amendment of written statement on the ground that the defendant categorically stated the defendant is a member of PCRA which is a body constituted by Ministry of Petroleum and Natural Gases, Government of India and as such, from the beginning of tenancy, defendant used the said premises also to carry out work of PCRA. According to the learned Court below there was an admission that PCRA is doing work from unit No.2C of the suit building. If the amendment, sought for by the defendant, is allowed it would completely change the nature of defendant’s case put forth originally. Defendant will not be permitted to withdraw admission made in the written statement.

Defendant aggrieved by the impugned order of rejection moved the filed instant revisional application before this Hon’ble High Court.

Ms. Meharia, learned Counsel appearing on behalf of the petitioner contended that it is now settled position of law that addition of a new ground of defence or substituting or altering a defence or withdrawal of admission of plea in the written statement would not be objectionable. She submitted that the concerned officers of the defendant who instructed at the time of filing original written statement were not at all aware of the relevant material facts and therefore, they could not state the facts properly. Subsequently, at the time of trial some documents were found out from which it revealed that the statements made in the original written statement require a change and thereafter this application was made.

Learned Counsel submitted that it was a mere mistake and the mistake to be corrected. She submitted that the finding of the learned Court below is not correct. According to her, withdrawal of admission by way of amendment is also permissible. In support of her submission reliance was placed on (Baldev Singh and others Vs. Manohar Singh and another), reported in (2006) 6 S.C.C. 498; (Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others), reported in (2007) 5 S.C.C. 602 and (Sushil Kumar Jain Vs. Manoj Kumar and another), reported in (2009) 14 S.C.C. 38.

Learned Counsel submitted that in view of the aforementioned three judgements there is no bar to withdraw any admission made or such admission can be explained by amendment of their written statement even by taking inconsistent pleas or substituting or altering the defence.

Aforesaid submissions of the learned Counsel appearing for the petitioner were contested by Mr. Chatterjee, learned Counsel appearing for the plaintiff/ opposite party. Mr. Chatterjee contended admission made by the defendant in their written statement cannot be allowed to be withdrawn by amendment of the written statement which would displace the case of the plaintiff and cause irretrievable prejudice.

Mr. Chatterjee in support of his contention relied upon the same judgements cited by Ms. Meharia, the learned Counsel appearing for the petitioner and submitted that the consistent view of the Hon'ble Supreme Court in those three judgements is that if categorical admission is made in the written statement then the defendant cannot resile from. However, that admission can be explained or clarified in a given case and it would depend on the nature and character of the suit itself.

Mr. Chatterjee submitted that there are other judgements also, one of which is reported in (2008)7 S.C.C. 85 (Gautam Sarup Vs. Leela Jetley and others). Mr. Chatterjee also cited Hon'ble Division Bench decision of this Hon'ble Court reported in A.I.R. 1977 Calcutta 189 (Kanailal Das and another Vs. Jiban Kanai Das and another). He also referred another Apex Court judgement reported in 1984 (Supp) S.C.C. 594 (Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and another)

Mr. Chatterjee submitted under no circumstances an admission made could be withdrawn and admission is a best possible evidence against a person who is making the same. He further submitted that not only

admission of user being withdrawn but the defendant is substituting the plea already taken.

Mr. Chatterjee then submitted that the provisions under Section 6(a) of the West Bengal Premises Tenancy Act, 1997 clearly prescribes many grounds for eviction, one of which is subletting, assignment or otherwise parted with the possession of whole or any part of the premises without obtaining consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord.

Mr. Chatterjee submitted that the defendant wanted to amend the written statement so that the admission made by them cannot be used against the defendant.

Mr. Chatterjee submitted that there is no illegality whatsoever in the order passed by the learned Judge, Fifth Bench, Presidency Small Causes Court, Calcutta. He submitted that the revisional application should be dismissed.

In reply Ms. Meharia submitted that the Calcutta High Court judgement in Kanailal Das (supra) has no manner of application because that was a case for amendment of plaint and the principles which are applicable in case of amendment of plaint did not strictly apply in case of amendment of written statement. She submitted that the defendant is not precluded to alter, withdraw admission or substituting a new case, therefore, the impugned order cannot be sustained. The decision of the

learned Court below is to be set aside and the application for amendment should be allowed or could be sent back to the learned Court below for reconsideration.

Having heard the rival submissions of the respective learned Counsel appearing for the respective parties and after considering the original written statement as well as the proposed amendment sought for by the defendant and the order passed by the learned Court below this Court is of the view that the defendant wanted to introduce a new case which is in effect withdrawal of admission of user as was stated in the original written statement. This amendment, if allowed, would not only cause prejudice to the opposite party but also non-suit them. Learned Court below has come to a correct conclusion considering the original written statement and also proposed amendment sought for by the defendant and held there was an admission to the effect that PCRA is doing work from unit No.2C of the suit building and if the amendment sought for by the defendant is allowed, not only it would completely change the nature of defence case as put forth originally but that would be withdrawal of an admission made by them in the original written statement. Therefore, there is no error apparent on the face of record nor there is any illegality or material irregularity in the order of the learned Court below passed on 9<sup>th</sup> July, 2014. In this context it would very much relevant to refer the judgement cited by the learned Counsel appearing for the parties. The first judgement cited by Ms. Meharia i.e. Baldev Singh and others (supra) where amendment of written statement

was sought for introducing an additional plea of limitation and it was alleged in that case that if such amendment is allowed certain admission made would be allowed to be withdrawn which is not permissible in law. However, the Hon'ble Apex Court upon consideration of the application for amendment of the written statement in depth came to a definite conclusion that the amendment sought for in no way found any admission made by the appellant in that case to be withdrawn by way of amendment of the written statement. Although it was held in the judgement that power of court is wide enough to permit amendment of written statement by incorporating an alternative plea or by substituting defence but it was not the ratio of that judgement that admission made could be withdrawn by way of amendment. Otherwise also the facts and circumstances of present case are totally different from that case and therefore, the ratio of that judgement will not come to the benefit of the petitioner.

The next case cited by Ms. Meharia i.e. Usha Balashaheb Swami (supra) also on different factual matrix, there the defendant sought to add that the plaintiff and defendant nos.3 to 7 could not acquire right, title and interest in the joint family property, as they were the legitimate children of the deceased, Appaso. In the amendment application the defendant sought to add that Appaso, since deceased, was initially married to defendant No.1. As she had no issue Appaso took defendant no.2 as his second wife after coming into force of Hindu Marriage Act, 1955. The defendant alleged that since the marriage between Appaso and defendant no.2 was a nullity

neither the defendant No.2 nor the plaintiff and defendant nos.3 to 7 were entitled to claim any share in the suit properties. The Hon'ble Apex Court considering the entire matter came to a conclusion that the question of withdrawing admission made in the written statement did not arise as the appellant even after amendment has kept the admission made in paragraph 8 intact but only have added certain additional facts which need to be proved by the plaintiff and defendant nos.1 to 7 to get their respective shares. In that case the Hon'ble Apex Court held that admission made by the party in his original written statement can be explained, elaborated and clarified, but no where it was held that admission could be withdrawn. In the present case by way of proposed amendment the defendant not only withdrawing this admission but inserting something which would cause grave and irretrievable prejudice to the plaintiff and also displace him completely. Therefore, this case also is of no help to the petitioner.

Now let me consider the provisions under Section 6(a) of the West Bengal Premises Tenancy Act, 1997:-

*“6(a) where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord.”*

The grounds as stipulated in this provision, if proved, would be a cause of eviction. In my considered view, the plaintiff having taken such pleas would be non-suited in the event the amendment sought for is

allowed. Therefore, this amendment would not only cause serious prejudice but in effect non-suit the plaintiff. On that ground also I do not find any illegality or material irregularity in the order passed by the learned Court below.

In this context it would be pertinent to mention, the judgement of Baldev Singh and others (supra) was considered by the Hon'ble Apex Court in their subsequent judgement of Usha Balashaheb Swami and others (supra). Both judgements including the judgement delivered in case of Panchdeo Narain Srivastava (supra) was considered by the Hon'ble Apex Court in case of Goutam Sarup and the Hon'ble Apex Court was pleased to hold as noted in paragraph 28 of the judgement:-

*“28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.”*

The other Hon'ble Apex Court decision in Sushil Kumar Jain (supra) as referred by Ms. Meharia is also decided on different factual scenario. Moreover, it is not the ratio of the judgement that withdrawal of admission is permissible to the utter prejudice to the plaintiff. In that case also the admission which was made in the written statement was not at all withdrawn. In the judgement the Hon'ble Apex Court once again reiterated

admission can be explained by amendment of the written statement even by inconsistent pleas or substituting, altering defence. However, on careful consideration of the aforementioned judgements this Court is of the view that the admission made in the original written statement cannot be withdrawn and a new case cannot be made out destroying the case of the plaintiff completely and in effect making him out non-suited.

Therefore, for the reasons as aforesaid, the proposed amendment sought to be introduced in the written statement cannot be allowed. Thus, the revisional application fails and as such, dismissed.

(Ashoke Kumar Dasadhikari, J.)