M/S. Estralla Rubber vs Dass Estate (Private) Ltd on 12 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3295, 2001 (8) SCC 97, 2001 AIR SCW 3544, 2001 (3) CAL HN 81, 2001 (6) SCALE 275, 2001 ALL MR(CRI) 484, (2001) 4 ALLMR 484 (SC), 2001 (7) JT 658, 2002 SCFBRC 88, 2001 (9) SRJ 301, (2001) 7 JT 657 (SC), 2002 (1) ALL CJ 168, (2001) 2 RENCR 393, (2002) 1 LANDLR 522, 2002 ALL CJ 1 168, (2001) 3 CIVILCOURTC 663, (2002) 2 MAD LW 24, (2001) 2 RENTLR 466, (2001) 3 SCJ 488, (2001) 7 SUPREME 53, (2001) 4 RECCIVR 362, (2002) 1 ICC 657, (2001) 6 SCALE 275, (2002) 1 CURLJ(CCR) 385

Author: Shivaraj V. Patil

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 6327 of 2001

PETITIONER:
M/S. ESTRALLA RUBBER

Vs.

RESPONDENT:
DASS ESTATE (PRIVATE) LTD

DATE OF JUDGMENT: 12/09/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

WITH CIVIL APPEAL NO. OF 2001 (Arising out of SLP (C) No. 8737 of 2001) J U D G M E N T Shivaraj V. Patil, J.

CIVIL APPEAL NO. OF 2001
(Arising out of SLP (C) No.3581 of 2001)

Leave granted.

This appeal by the defendant in the suit, aggrieved by and directed against the order dated 15th September, 2000 made in CO 665 of 2000. The plaintiff filed suit against the defendant in respect of suit property for eviction on the ground of reasonable requirement for building or rebuilding and on the ground of default in payment of rent. The defendant filed an application under Section 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 (for short the 'Act') raising certain contentions including that the relationship of landlord and tenant did not exist between the parties. Thereafter the defendant filed an application for amendment under Order VI Rule 17 of the Code of Civil Procedure. The said amendment application was contested by the plaintiff. The Trial Court rejected the application, taking a view that the proposed amendment would be inconsistent and it will have the effect of displacing the plaintiff from admission made by the defendant. The defendant filed a revision petition against the said order under Section 115A of the CPC before the District Judge who allowed the revision petition, reversed the order of the trial court and allowed the amendment application filed by the defendant. It is, thereafter, the plaintiff filed petition under Article 227 of the Constitution of India before the High Court. The High Court set aside the order of the District Judge. Hence this appeal.

The learned counsel for the appellant strongly contended that the High Court was not right and justified in exercising power under Article 227 of the Constitution of India as an appellate or a revisional court without bearing in mind that the power under Article 227 is one of the superintendence; it was not correct to say that the defendant wanted to withdraw the so-called admission said to have been made in favour of the plaintiff, when no such admission was there as a matter of fact. He added that the proposed amendment was only to support the defence already taken by elaboration based on the revenue records. It was not shown as to how any prejudice would be caused to the plaintiff by allowing the amendment; a mere delay in filing application for amendment is itself not a ground to reject the same; the proposed amendment was necessary to adjudicate the dispute between the parties and to avoid further litigation.

Per contra, the learned counsel for the respondent made submissions supporting the impugned order passed by the High Court. He urged that in the proposed amendment application, the defendant has taken inconsistent plea; he wanted to take away the effect of admission made earlier in favour of the plaintiff.

We have considered the submissions made on behalf of either side. The High Court set aside the order passed by the learned District Judge stating that the proposed amendment will have the effect of displacing the plaintiff from admission made by the defendant in its petition filed under Sections 17(2) and 17(2A) of the Act and that such admission could not be permitted to be withdrawn. We have perused the relevant records including the original application and the proposed amendments. We are not able to see any admission made by the defendant as such, which was sought to be withdrawn. By the proposed amendment the defendant wanted to say that Ala Mohan Das was a permissive occupier instead of owner. The further amendment sought was based on the entries made in the revenue records. It is not shown how the proposed amendment prejudiced the case of the plaintiff. It is also not the case of the plaintiff that any accrued right to it was tried to be taken

away by the proposed amendment. The proposed amendment is to elaborate the defence and to take additional plea in support of its case. Assuming that there was some admission indirectly, it is open to the defendant to explain the same. Looking to the proposed amendments it is clear that they are required for proper adjudication of the controversy between the parties and to avoid multiplicity of judicial proceedings. The High Court also found fault with the defendant on the ground that there was delay of three years in seeking amendment to introduce new defence. From the records it cannot be said that any new defence was sought to be introduced. Even otherwise, it was open for the defendant to take alternate or additional defence. Merely because there was delay in making the amendment application, when no serious prejudice is shown to have been caused to the plaintiff so as to take away any accrued right, the application could not be rejected. At any rate, it cannot be said that allowing amendment caused irretrievable prejudice to the plaintiff. Further, the plaintiff can file his reply to the amended written statement and fight the case on merits. The impugned order passed by the High Court exercising jurisdiction under Article 227 of the Constitution to set aside the order passed by the learned District Judge in revision under Section 115A of the CPC allowing the amendment application filed by the defendant, is patently erroneous and unsustainable. In the impugned order the High Court observed that the order of the learned District Judge was apparently wrong but in our view it is otherwise.

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd vs. Ramtahel Ramanand and Ors. [AIR 1972 SC 1598] in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh & Anr. vs. Amarnath & Anr. [1954 SCR 565]. This court in Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Anr. [AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced

principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.

It is fairly settled in law that the amendment of pleadings under Order 6, Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of plaintiff, depending on facts and circumstances of a given case. In certain situations a time barred claim cannot be allowed to be raised by proposing an amendment to take away valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cost serious prejudice to the opposite side. This Court in recent judgment in B.K. Narayana Pillai vs. Parameswaran Pillai and another [(2000) 1 SCC 712], after referring to number of decisions, in para 3 has stated, thus: -

> "3. 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 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 a hyper technical 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 hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

In para 4 of the same judgment this Court has quoted the following passage from the judgment in A.K. Gupta and Sons Ltd. Vs. Damodar Vally Corporation [1966 (1) SCR 796]: -

> "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 on new case or cause of action is barred: Weldon v. Neal [(1887) 19 QBD 394 : 56 LJ QB 621]. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a 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 : ILR 48 Cal 110] and L.J. Leach and Co. Ltd. V. Jardine Skinner and Co. [AIR 1957 SC 357 :
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> 1957 SCR 438]."

This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement and that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event. It is further stated that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice and that any admission made in favour of the plaintiff conferring right on him is not withdrawn.

Applying the above stated principles to the case on hand we have no hesitation to state that the impugned order of the High Court is unsustainable.

In view of what is stated above this appeal is entitled to succeed. Accordingly it is allowed, the impugned order is set aside and the order passed by the learned District Judge is restored. No Costs.

CIVIL APPEAL NO. 6328 OF 2001 (Arising out of SLP (C) No. 8737 of 2001) Leave granted.

The facts stated and contentions raised in this appeal are similar to those in Civil Appeal No...../2001 (Arising out SLP(C) No. 3581/2001) relating to amendment. Hence this appeal is also allowed. The impugned order of the high Court confirming the order of the courts below is set aside and the amendment application filed by the defendant is allowed. No costs.

.....J. [D.P. Mohapatra] .....J. [Shivaraj V. Patil] September 12, 2001