

A MODI SPINNING & WEAVING MILLS CO. LTD. & ANR.

v.

LADHA RAM & CO.

September 23, 1976

B [A. N. RAY, C.J., M. H. BEG AND P. N. SHINGHAL, JJ.]

*Pleadings, amendments to—Amendment to the pleadings to introduce an entirely different case, under the guise of permissible inconsistent pleas which is likely to cause prejudice to the other side cannot be allowed—Civil Procedure Code (Act V of 1908)—Order VI, Rule 17.*

C In a suit for decree for Rs. 1,30,000/- instituted by the respondent/plaintiff in May, 1971, the appellants/defendants filed their written statement admitting that by virtue of an agreement dated April 7, 1967, the plaintiff worked as their Stockist-cum-Distributor. After three years the defendants filed an interlocutory application under Order VI, Rule 17 to amend the written statement by substituting paragraphs 25 and 26 with a new paragraph in which they took the fresh plea that the plaintiff was a mercantile agent-cum-purchaser. The trial court rejected the said application and the High Court, in revision, affirmed the judgment of the trial court.

Dismissing the appeal by special leave the Court.

D HELD : It is true that inconsistent pleas can be made in pleadings. The defendants cannot be allowed to change completely the case and substitute an entirely different and new case. In the instant case, the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings, but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. [729 G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 190 of 1976.

Appeal by special leave from the judgment and order dated 8-8-1975 of the Allahabad High Court in Civil Revision No. 1004/74.

*S. C. Manchanda and M. L. Jain*, for the appellants.

F *O. P. Malhotra, N. S. Das Bahl, Y. P. Chadha and Sat Pal*, for the respondent.

The Judgment of the Court was delivered by

G RAY, C.J. This appeal is by Special Leave from the judgment dated 8 August, 1975 of the High Court of Allahabad. The appellants are defendants and the respondent is the plaintiff in suit out of which this appeal arises.

The plaintiff's suit is for a decree for Rs. 1,30,000/- on the cause of action as laid in the plaint.

The suit was instituted sometime in the month of May, 1971.

H The defendants filed written statement.

Two paragraphs of the written statement contained additional pleas. Paragraph 25 states that the agreement dated 7 April, 1967 is appli-

cable to the transactions in which the plaintiff works as stockist-cum-distributor of the defendants. The defendants further allege in paragraph 25 that the agreement is not applicable to transactions in which the plaintiff acts as a principal. In paragraph 26 the defendants/appellants in the alternative allege that even if agreement dated 7 April, 1967 is applied to the dealings in suit, plaintiff's position is merely that of an agent of the defendants and as such plaintiff is not entitled to claim any damages from the defendants for non-supply of its own goods for sale through the plaintiff.

The defendants/appellants approximately 3 years after the filing of the written statement made an application for amendment of the written statement. The proposed amendments were for deletion of paragraphs 25 and 26 and for substitution of two new paragraph 25 and 26. The proposed amendment in para 25 was that by virtue of the agreement the plaintiff was appointed a mercantile agent and the plaintiff acted in that capacity in placing orders on the defendants. The defendants further denied the allegation of the plaintiff that the plaintiff placed orders with the defendants in the plaintiff's capacity as a purchaser. The defendants also alleged that the plaintiff throughout acted as an agent of the defendants. In paragraph 26 of the proposed amendment it was alleged by the defendants that being a mercantile agent and an agent of the defendants in accordance with the terms of the agreement, the plaintiff has no *locus standi* to file the suit.

The trial court rejected the application of the defendants for amendment. One of the reasons given by the trial court is that the defendants wanted to resile from admissions made in paragraph 25 of the written statement. The trial court said that "the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law." The trial court held the application for amendment to be not bonafide.

The High Court on revision affirmed the judgment of the trial court and said that by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.

The decision of the trial court is correct. The defendants cannot be allowed to change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case.

It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.

We are told that the defendants proposed amendments to two other paragraphs of written statement. These are paragraphs 4 and 19

A of the written statement. These amendments were also rightly rejected.

For the forgoing reasons the appeal must fail. The defendants/appellants cannot be allowed to amend the written statement in the manner suggested.

B The two alternative pleas of the defendants as alleged in paragraphs 25 and 26 of the written statement are there. The parties will be able to make their rival contentions on the pleadings as to the issues to be raised. The defendants wish to raise issues on those paragraph 25 and 26. Counsel for the plaintiff states that it is open to the defendants to apply for the framing of the issues. They will be at liberty to do so.

C The costs of this appeal will be paid by the appellants to the respondent.

Record can be sent back to the trial court as early as possible.

S.R.

*Appeal dismissed.*