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M/S. ESTRALLA RUBBER

v.

DASS ESTATE (PVT.) LTD.

SEPTEMBER 12, 2001

B

[D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.]

*Civil Procedure Code, 1908:*

C

*Order VI Rule 17—Scope and ambit of—Amendment of pleading rejected by Trial Court on the ground that the proposed amendment was inconsistent and had the effect of displacing the plaintiff from admission—On revision amendment was allowed—Plaintiff filed writ petition—High Court set aside the order made on revision application—On appeal, held: amendments in pleading are for proper adjudication of controversy and to avoid multiplicity of proceeding—Mere delay in filing amendment application when no prejudice to other party to take away accrued right, should not be a ground for rejecting such application—Principles applicable to amendment of plaint equally applicable to amendment of written statement.*

D

*Constitution of India :*

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*Article 227—Jurisdiction—Exercise of—Held, High Court is not vested with unlimited power to correct wrong and hardship of all kinds—Power to interfere with the order of the Subordinate Courts—Restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice—Power can be exercised if finding is perverse or no evidence to justify it.*

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**The appellant-defendant in the original suit for eviction, filed an application for amendment under Order VI Rule 17 C.P.C. The Trial Court rejected application for amendment holding that the proposed amendment would be inconsistent and it will have the effect of displacing plaintiff from admission made by the defendant; Aggrieved, defendant filed revision application u/s. 115-A of C.P.C. The Distt. Judge reversed the order and allowed amendment application.**

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**Plaintiff filed Petition under Article 227 of the Constitution of India. The High Court set aside the order of the District Judge. Hence this appeal.**

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The appellant contended that the High Court was not justified in exercising power under Art. 227 as an appellate or a revisional Court as power under this Article as conferred is one of Superintendence, the defendant did not want to withdraw admission made in favour of plaintiff, amendment was only to support the defence already taken by elaboration and no prejudice would be caused; in fact amendment was necessary to adjudicate the dispute and to avoid further litigation.

Respondent contended that by the proposed amendment, defendant has taken inconsistent plea and wanted to take away the effect of admission from plaintiff.

Allowing the appeal, the Court

**HELD : 1.** On perusal of records, it is seen that no admission made by the defendant was sought to be withdrawn. It is not shown how the proposed amendment prejudiced the case of plaintiff. The proposed amendments are required for proper adjudication of the controversy between the parties and also to avoid multiplicity of judicial proceedings; merely because there was delay in making the amendment application, when no serious prejudice is shown to have been caused. So as to take away any accrued right of the Plaintiff the amendment application could not be rejected. [72-B-C; D-E]

**2.** The exercise of Power under Art. 227 involves a duty on the High Court to see that the inferior Courts/Tribunals function within bounds of their authority to discharge duty in a legal manner and not vested with unlimited prerogative, to correct all kinds of hardship or wrong decisions made within the limits of jurisdiction of the Subordinate Courts or Tribunals. Exercise of this power and interfering with the orders of the Courts or Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or Justice. Further High Court under this Article cannot exercise its power as an appellate Court to substitute its own Judgment. It can set aside or ignore the findings of the facts of inferior Courts/Tribunals, if there is no evidence to justify the same or if the finding is perverse. [72-H; 73-A; B-C]

*Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ramtahal Ramanand and Ors.*, AIR (1972) SC 1598; *Waryam Singh & Anr. v. Amarnath & Anr.*, [1954]

A **SCR 565; Babhutmaj Raichand Oswal v. Laxmibai R. Tarta and Anr., AIR (1975) SC 1297, relied on.**

B **3. It is fairly settled in law that amendment of pleading is allowed under Order VI Rule 17. If such an amendment is required for proper and effective adjudication of controversy and to avoid multiplicity of Judicial proceedings, subject to certain conditions such as allowing amendment should not result in injustice to other side, normally a clear admission, conferring certain right is not allowed to be withdrawn. Time barred claim cannot be allowed by amendments. However, mere delay in making amendment application is not enough to refuse amendment, as delay can be compensated in terms of money. [73-G-H; 74-A]**

C ***B.K. Narayana Pillai v. Parameswaran Pillai and Anr., [2000] 1 SCC 712 and A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation, [1966] 1 SCR 796, relied on.***

D **4. The Principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement. Courts are more generous in allowing 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 exception that by proposed amendment, the other side should not be subjected to serious injustice. [74-H; 75-A]**

E ***A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation, [1966] 1 SCR 796, relied on.***

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6327 of 2001

F From the Judgment and Order dated 15.9.2000 of the Calcutta High Court in C.O./C.R. No. 665 of 2000.

WITH

C.A. No. 6328 of 2001.

G Rana Mukherjee and Mrs. Sumita Mukherjee for the Appellant.

Bishwajit Bhattacharyya, Ranjan Mukherjee and Puja Khatkar for the Respondent.

The Judgment of the Court was delivered by

H **SHIVARAJ V. PATIL, J.** Civil Appeal No. 6327 of 2001 (Arising out

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.

A 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.

H 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. v. 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. v. Amarnath & Anr.*, [1954] SCR 565. This court in *Babhutmal Raichand Oswal v. 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

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 cause serious prejudice to the opposite side. This Court in recent judgment in *B.K. Narayana Pillai v. Parameswaran Pillai and Anr.*, [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.”

E In para 4 of the same judgment this Court has quoted the following passage from the judgment in *A.K. Gupta and Sons Ltd. v. Damodar Valley 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 = 1957 SCR 438.”

H This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment

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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.

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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.

C

CIVIL APPEAL NO. 6328 OF 2001

(Arising out of SLP (C) No. 8737 of 2001)

D

Leave granted.

The facts stated and contentions raised in this appeal are similar to those in Civil Appeal No. 6327/2001 (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.

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S.K.S.

Appeals allowed.