

M/S CHAKRESHWARI CONSTRUCTION PVT. LTD.

v.

MANOHAR LAL

(Civil Appeal Nos. 2343-2344 of 2017)

FEBRUARY 10, 2017

[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]

*Code of Civil Procedure, 1908 – Or. VI, r. 17 and Or. VII, r. 14(3) – Applications under, r/w. s. 21 of Rajasthan Rent Control Act, 2001 – Seeking amendment of eviction petition and seeking permission to file additional documents in support of the amendment sought – Applications filed after conclusion of evidence – Applications dismissed by courts below – On appeal, held: The amendment proposed and permission sought for filing additional documents deserved to be allowed – Though there was delay in filing the applications, but the delay has been duly explained – Pleadings can be amended at any stage not only during pendency of trial, but also at the first and second appellate stage, provided the amendment proposed is bonafide, relevant and necessary for deciding the rights of the parties – Filing of additional evidence is permissible w/Or. VII, r. 14(3) CPC at the stage of trial and w/Or. XIV, r. 27 CPC at the first and second appellate stage with the leave of the court – Rajasthan Rent Control Act, 2001 – s. 21.*

**Allowing the appeals, the Court**

**HELD:** 1. The amendment proposed by the appellant so also the permission sought for filing additional documents deserved to be allowed. It is for the reasons that firstly, the amendment proposed did not change the nature of the case originally set up by the appellant in the eviction petition; secondly, the amendment did not introduce any fresh cause of action; thirdly, the amendment was relevant for deciding the question of subletting and availability of alternative accommodation with the respondent; fourthly, the facts proposed in the amendment not being in the personal knowledge of the appellant and having obtained from the concerned State Department recently, the same could be allowed to be brought on record for its consideration;

A fifthly, no prejudice was likely to be caused to the respondent, if  
 the applications had been allowed because the respondent in such  
 eventuality would have got an opportunity to make consequential  
 amendment in his written statement and file additional documents  
 in rebuttal; and lastly, in order to prove the case, the amendment  
 proposed and permission to file documents should have been  
 B granted. [Para 16] [928-B-D]

2. It is true that there was some delay on the part of the  
 appellant in filing the applications, but, the appellant had explained  
 the delay. One cannot dispute that in appropriate cases, the parties  
 are permitted to amend their pleadings at any stage not only during  
 C the pendency of the trial but also at the first and second appellate  
 stage with the leave of the Court provided the amendment  
 proposed is *bona fide*, relevant and necessary for deciding the  
 rights of the parties involved in the *lis*. The law also permits the  
 parties to file additional evidence at any stage of the trial (Order  
 D 7 Rule 14 (3) CPC) including at the first or/and second appellate  
 Stage (Order 41 Rule 27 CPC) with the leave of the Court provided  
 a case is made out to seek such indulgence. [Paras 17, 18] [928-  
 E-F]

3. As a consequence, the applications made by the  
 E appellant for amendment of the eviction petition and the  
 application made for filing additional documents are allowed and  
 the documents, as prayed for, are allowed to be taken on record.  
 To meet the ends of justice, the respondent shall pay cost of  
 Rs.1500/- to the appellant. [Para 21] [929-A-B]

F *Revajeetu Builders and Developers v. Narayanaswamy  
 & Sons and Others* (2009) 10 SCC 84 : [2009] 15  
 SCR 103 – relied on.

#### Case Law Reference

[2009] 15 SCR 103                      relied on                      Para 14

G CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2343-  
 2344 of 2017.

From the Judgment and Order dated 08.01.2015 of the High  
 Court of Judicature for Rajasthan at Jaipur Bench, Jaipur, in S. B. Civil  
 H Writ Petition Nos. 4088 and 4089 of 2014.

Ms. Shobha, Bonny, Adv. for the Appellant.

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Shadan Farasat, T. E. Jaswita, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 08.01.2015 passed by the High Court of Rajasthan at Jaipur Bench, Jaipur in SB Civil Writ Petition No.4088/2014 and SB Civil Writ Petition No.4089/2014 whereby the High Court dismissed the writ petitions filed by the appellant herein challenging the order of the Rent Tribunal dated 26.02.2014 dismissing its application under Order 7 Rule 14(3) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") read with Section 21 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act") and Order 6 Rule 17 of the Code read with Section 21 of the Act respectively.

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3. We herein set out the facts, in brief, to appreciate the issue involved in this appeal.

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4. The short question, which arises for consideration in this appeal, is whether the Rent Tribunal and the High Court were justified in rejecting the two applications filed by the appellant in their pending main eviction petition, viz., one filed under Order 6 Rule 17 of the Code read with Section 21 of the Act (Annexure P-6) seeking to amend their eviction petition and other filed under Order 7 Rule 14(3) of Code read with Section 21 of Act seeking permission to file some additional documents in support of the amendment sought?

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5. The appellant is the plaintiff/applicant whereas the respondent is the defendant/non-applicant.

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6. The appellant-a limited company is the owner of the shop (details of the shop are described in column 3 of the main Application No. 741 of 2005(Annexure P-1) (hereinafter referred to as "the suit shop"). The appellant has let out the suit shop to the respondent on a monthly rent of Rs.670/-.

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7. The appellant has filed the eviction petition against the respondent under the Act before the Rent Tribunal, Jaipur claiming eviction of the respondent from the suit shop. The eviction is claimed, *inter alia*, on the ground of subletting of the suit shop alleged to have

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A been done by the respondent in favour of one “M/s Goel Iron and  
Hardware Store”. It is averred that the respondent has parted with the  
possession of the suit shop in favour of alleged sub-tenant without the  
consent of the appellant and hence he is liable to be evicted from the suit  
shop. The other ground on which the eviction is claimed relates to  
B availability of an alternative accommodation to the respondent in the city  
where he is carrying on his business.

8. The respondent filed his written statement. While admitting  
the tenancy, he denied material averments made in the eviction petition.  
The parties have adduced their respective evidence. The case is now at  
its closing stage.  
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9. As mentioned above, the appellant, after close of the evidence,  
filed two applications. One was under Order 6 Rule 17 of the Code  
read with Section 21 of the Act wherein they sought to amend their main  
eviction petition. It was alleged therein that the appellant had filed an  
application under Right to Information Act, 2005 seeking to find out the  
D name under which the respondent is carrying on the business in their  
alternative accommodation in the city. It was alleged that recently they  
were informed by the concerned department that the name of the  
respondent’s shop is “Bright Iron Traders”. The appellant, therefore,  
sought permission to amend the eviction petition and substitute the name  
E of the shop which was initially mentioned in the eviction petition to the  
one proposed in the amendment application. In support of the proposed  
amendment, the appellant filed another application under Order 7 Rule  
14(3) of the Code read with Section 21 of the Act seeking leave of the  
Court to file the documents, which they claimed to have obtained from  
the concerned department.  
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10. The respondent opposed these applications contending, *inter  
alia*, in his reply that firstly, both the applications were filed belatedly  
and secondly, neither the proposed amendment nor the documents sought  
to be filed are relevant for the disposal of the main case.

G 11. By order dated 26.02.2014, the Rent Tribunal dismissed both  
the applications on the ground of delay and being immaterial.

12. Felt aggrieved, the appellant filed two writ petitions before  
the High Court. By impugned orders, the High Court dismissed the writ  
petitions and affirmed the order of the Rent Tribunal giving rise to filing  
of the appeals by special leave by the plaintiff/applicant before this Court.  
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13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside of the impugned orders, allow the aforementioned applications of the appellant.

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14. The principle applicable for deciding the application made for amendment in the pleadings remains no more *res integra* and is laid down in several cases. In the case of **Revajeetu Builders and Developers vs. Narayanaswamy & Sons and Others**, (2009) 10 SCC 84, this Court, after examining the entire previous case law on the subject, culled out the following principle in Para 63 of the judgment which reads as under:

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**“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:**

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**(1) whether the amendment sought is imperative for proper and effective adjudication of the case;**

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**(2) whether the application for amendment is bona fide or mala fide;**

**(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**

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**(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;**

**(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and**

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**(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.**

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**These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”**

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A 15. Applying the aforesaid principle of law to the facts of the case at hand, we are of the considered opinion that the amendment proposed by the appellant so also the permission sought for filing additional documents deserved to be allowed.

B 16. It is for the reasons that firstly, the amendment proposed did not change the nature of the case originally set up by the appellant in the eviction petition; Secondly, the amendment did not introduce any fresh cause of action; Thirdly, the amendment was relevant for deciding the question of subletting and availability of alternative accommodation with the respondent; Fourthly, the facts proposed in the amendment not being in the personal knowledge of the appellant and having obtained from the  
C concerned State department recently, the same could be allowed to be brought on record for its consideration; Fifthly, no prejudice was likely to be caused to the respondent, if the applications had been allowed because the respondent in such eventuality would have got an opportunity to make consequential amendment in his written statement and file additional  
D documents in rebuttal; and lastly, in order to prove the case, the amendment proposed and permission to file documents should have been granted.

E 17. It is true that there was some delay on the part of the appellant in filing the applications but, in our opinion, the appellant had explained the delay. One cannot dispute that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the Court provided the amendment proposed is *bona fide*, relevant and necessary for deciding the rights of the parties involved in the *lis*.

F 18. Similarly, the law also permits the parties to file additional evidence at any stage of the trial [Order 7 Rule 14 (3)] including at the first or/and second appellate Stage (Order 41 Rule 27) with the leave of the Court provided a case is made out to seek such indulgence.

G 19. In this case, we find that the appellant has made out the case in support of their two applications under consideration.

H 20. In the light of foregoing discussion, we cannot concur with the reasoning and the conclusion of the Courts below, which wrongly resulted in dismissal of the two applications filed by the appellant.

21. The appeals thus succeed and are accordingly allowed. Impugned orders and the order dated 26.02.2014 passed by the Rent Tribunal are set aside. As a consequence, the applications made by the appellant for amendment of the eviction petition and the application made for filing additional documents are allowed and the documents, as prayed for, are allowed to be taken on record. To meet the ends of justice, the respondent shall pay cost of Rs.1500/- to the appellant.

22. The respondent is also granted opportunity to make consequential amendment in the written statement and is further granted liberty to file any additional documentary evidence, if he so desires to file in rebuttal. Parties are also granted liberty to adduce any further oral evidence in support of their case in addition to what has already been led.

23. The Tribunal shall conclude the proceedings and pass final orders within three months from the date of receipt of copy of this judgment. The parties are directed to appear before the Rent Tribunal on 20.02.2017 to enable the Rent Tribunal to conclude the proceedings.

Kalpana K. Tripathy

Appeals allowed.