2022 LiveLaw (Del) 187

IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: HON'BLE MR. JUSTICE YASHWANT VARMA

W.P.(C) 2281/2019; 8 March 2022

DIGAMBER JAIN MAHILA ASHRAM *versus* **UNION OF INDIA & ORS.**

Code of Civil Procedure, 1908; Order VI Rule 17 & Order XI - Amendments to pleadings must be sought by the party concerned within a reasonable time and should not sought to be introduced so as to stall the trial itself. *(Para 12)*

Petitioner Through: Mr. Arkaj Kumar and Mr. Hari Om Gupta, Mr. Sukrit Gupta, Advs.

Respondents Through: Mr. Vivek Kumar Goyal and Mr. Bibhash Kr. Sharma, Advs. for UOI.

CM APPL. 8002/2022(for restoration)

1. Bearing in mind the disclosures made and since sufficient cause has been shown for absence of counsel, this application for restoration shall stand allowed. The writ petition shall consequently stand restored to the record.

2. Application stands disposed of.

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3. The challenge in the present writ petition is to the order of 13 February 2019 in terms of which the Estate Officer ceased of proceedings initiated by the respondents referable to Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 [Act] has proceeded to reject applications made by the petitioners here for amendment and for the issuance of interrogatories.

4. These proceedings before the Estate Officer were instituted in 2001. The proceedings emanated consequent to the cancellation of the lease granted in favour of the petitioner by the respondents on 11 January 2001. That order was challenged by the petitioner here by way of W.P. (C) No.3552/2014. Ultimately on 13 September 2018, the said writ petition was withdrawn on the statement of the petitioner that the writ petition was not being pursued subject to rights being reserved to urge all grounds in challenge to the proceedings as drawn by the Estate Officer before the authority itself. According that liberty, the Court proceeded to dismiss the writ petition. It is only thereafter that the application under Order VI Rule 17 and Order XI of Code of Civil Procedure, 1908 [CPC] came to be preferred.

5. The Estate Officer has while rejecting those applications observed that the application for amendment was not maintainable since it has come to be filed after the matter had been posted for evidence. The application for issuance of interrogatories met with a similar fate with the Estate Officer observing that the same was not in the format prescribed under the CPC and that in any case, the application lacked bonafide and appeared to have been made only to delay the disposal of the main case.

6. Assailing the aforesaid order, learned counsel contends that by way of an amendment, the petitioners sought inclusion of various facts which would constitute

the backdrop of a jurisdictional challenge to the drawal of proceedings under the Act. Learned counsel submits that a liberal approach must be brought to bear when it comes to deciding issues of amendment of pleadings. Sustenance is sought to be drawn in this respect from the observations as appearing in the judgment of the Court rendered in **Time Warner Entertainment Company, LP. Vs. A.K. Das & Ors; 2002 SCC OnLine Del 1421** and more particularly the following paragraphs therefrom which read thus:

"8. An amendment may be allowed at any stage of the proceedings. An amendment application can be entertained even after the close of the case for judgment and before judgment is pronounced. It is also a settled law that all amendments of the pleadings should be allowed which are necessary for determination of the real questions in controversy between the parties in the suit provided the proposed amendment does not alter or substitute a new cause of action. The proposed amendments should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. Hypertechnical approach should not be adopted and instead a liberal approach should be the general rule. A prayer for amendment can be rejected if the same is not bona fide. 9. In view of the settled position of law, to my mind, the amendments are necessary for the purpose of determining the real questions in controversy and would not cause any prejudice to the defendants if the same are allowed. The amendments as sought for in para 5 of the application have been necessitated because of the introduction of the HBO channel in India which was not within the knowledge of the plaintiff when the suit was filed."

7. Insofar as the rigours imposed by virtue of the amendments introduced in Order VI Rule 17 pursuant to Act, 22 of 2002**,** learned counsel submits that since proceedings had come to be instituted prior to the introduction of those amendments, the amended Order VI Rule 17 and the various restrictions which stand introduced by virtue thereof to seek amendment in proceedings would not apply. In support of the aforesaid submission, learned counsel has drawn the attention of the Court to a judgment rendered by a learned Judge of the Madras High Court in **L. Narayan Reddy vs. P. Narayan Reddy and Ors; 2004 SCC OnLine Mad 511**. Dealing with the aforesaid question, the learned Judge in **L. Narayan Reddy** observed thus:

"13. Thus it is seen, some of the provisions omitted in Order 6, some of the provisions inserted or substituted by Amended Civil Procedure Code shall not apply to in respect of any pleading filed before the commencement of implementing the amended provisions. In this case, admittedly, the suit was filed in the year 1996 i.e., before the amendments introduced under Act, 22 of 2002 and in this view of the matter, I am of the considered opinion, the proviso cannot be an impediment or bar in allowing the amendment application, if it otherwise deserves on merit to be allowed, on the basis that the trial has been commenced and, therefore, no amendment shall be allowed after commencement of the trial. Next we have to see whether the proposed amendment deserves acceptance."

8. Turning then to the interrogatories which were sought, it was submitted that it was the categorical case of the petitioners that the lease in question was not terminated in accordance with law and it was in connection with the aforesaid contention that the

petitioners sought a direction being framed by the Estate Officer commanding the respondents to produce the relevant records. For all the aforesaid reasons, it was submitted that the impugned order would not sustain and should be set aside by the Court.

9. At the very outset, it must be noted that while the reasoning assigned by the Estate Officer for rejecting the application for interrogatories on the ground that it was not in the format prescribed by the CPC may not be sustainable, the Court also bears in mind the observations entered by the Estate Officer who was constrained to observe that it lacked bonafide and had been filed with inordinate delay. It becomes pertinent to recall that the proceedings under the Act were initiated way back in 2001. The Court takes into consideration the spirit of the Act which mandates and envisages proceedings for eviction of unauthorized occupants from public premises to be concluded with expedition. It is for the aforesaid reason that the Legislature has chosen not to burden the procedure to be followed by the Estate Officer to be guided by the procedure which may otherwise apply to trials and stand strictly governed by the provisions of the CPC. While it is true that principles underlying the provisions of the CPC may be adopted and may also guide the exercise of power by the Estate Officer, undisputedly, they have no strict application. In any case and if it be the case of the petitioner that there was no termination of the lease in accordance with law, it is always open for them to urge those and all other grounds contemplated to be taken in challenge to the proceedings initiated before the Estate Officer. Ultimately if the petitioner were able to substantiate its objection in this respect and cross the rubicon recognised under the Act, the onus would clearly shift upon the respondents.

10. Turning then to the amendments which were sought, it is not disputed before this Court that the petitioner has duly laid a foundation to establish that the lease had been granted under the provisions of Government Grants Act, 1895. The challenge in essence which constituted part of the application for amendment was that a grant which is made under the 1895 Act cannot be subjected to question in proceedings under the Act and nor can any orders of eviction be framed in respect of those grants. If that be the position with respect to the pleading taken by the petitioner before the Estate Officer, it would ultimately only leave a question of law to be urged for the consideration of that authority.

11. The Court notes that the factum of the amendment having been moved only after the matter had been posted for evidence appears to be clearly justified and germane to the exercise of power by the Estate Officer. The reliance placed by learned counsel on decision rendered with the Court and more particularly in **Time Warner and L. Narayan Reddy** also do not carry the case of the petitioner any further for the following reasons.

12. The general principles which would govern the grant of an amendment to pleadings and as expounded by the learned Judge in **Time Warner** cannot possibly be doubted on first principles. However, at the same time, it must also be borne in mind that amendments to pleadings must be sought within a reasonable time and at

least not sought to be introduced so as to stall the trial itself. This was a test which was applicable even under the unamended CPC. It is not the case of the petitioner that the grounds sought to be introduced were either unavailable at the time when a response was originally filed or sprung into existence on account of subsequent events. It is this aspect which appears to have weighed upon the Estate Officer while proceeding to reject the application under Order VI Rule 17 of the CPC.

13. Insofar as the decision in **L. Narayan Reddy** is concerned, the Court notes that the learned Judge in that decision has while briefly noticing the amendments which were introduced by virtue of Act 22 of 2002 proceeded to cursorily observe that they would not apply to pleadings which had been placed before the concerned Court earlier in point of time. Notwithstanding the above, the Court notes that the Estate Officer has not refused the amendment on the ground that the Proviso as introduced in that provision by virtue of the amending Act applied. The authority has essentially rested its decision on the belated introduction of the proposed amendments. That was a circumstance of relevance even under the unamended CPC. In any case if the foundation for urging the plea that the Act could not be enforced already stood inducted in the pleadings, as was conceded by learned counsel, nothing precludes the petitioner from raising that legal issue before the Estate Officer. In any event, the grounds urged in challenge to the order passed by the Estate Officer do not warrant interference at the interim stage the effect of which would be to short circuit the proceedings itself. Accordingly, and for all the aforesaid reasons, the Court finds no merit in the challenge raised to the order impugned.

14. The writ petition consequently fails and shall stand dismissed. The Court however, observes that notwithstanding the dismissal of the instant writ petition, it shall be open to respective parties to raise all permissible contentions on merits before the Estate Officer.