

Present:

Mr. Justice Faruque Ahmed
and
Mr. Justice Md. Ruhul Quddus

Civil Revision No.734 of 2011

Mst. Samrun Bibi alias Shaharan Bibi and
others

... Petitioners

-Versus-

Md. Habibur Rahman and others

.... Opposite Parties

Mr. Probir Neogi, Advocate

...for the petitioners

Mr. Abdul Quiyum, Advocate

... for opposite party No.1

Judgment on 30.11.2011

Md. Ruhul Quddus, J:

This Rule, at the instance of the substituted defendants, was issued to examine the legality of order dated 7.2.2011 passed by the Joint District Judge, Second Court, Dhaka in Title Suit No.36 of 2002 rejecting their application for acceptance of additional written statement.

Facts relevant for disposal of the Rule, in brief, are that opposite party No.1 Md. Habibur Rahman instituted Title Suit No.36 of 2002 before the Joint District Judge, Second Court, Dhaka for specific performance of contract in respect of a property (as described in schedule of the plaint) impleading one Surjat Ali, predecessor-in-interest to the petitioners as principal defendant.

The said Surjat Ali during his lifetime had entered appearance and filed a written statement on 19.4.2004 contending *inter alia*, that the suit property was his dwelling house and there was no necessity to sell the same. The plaintiff was a person set up by one Mobarak Hossain, husband of Kohinoor Begum, who instituted Title Suit No.33 of 2000 against him (defendant, Surjat Ali). The said Mobarak Hossain and the plaintiff in collusion with each other filed the present suit and created the false sale agreement. He did never execute any sale agreement in favour of the plaintiff nor did he receive any money from him.

During pendency of the suit, the principal defendant Surjat Ali died. After his death, the petitioners as his legal heirs and successors were substituted in the suit on 9.7.2005. Thereafter they filed an additional written statement incorporating the ultimate result of Title Suit No. 33 of 2000 (renumbered as Title Suit No. 258 of 1997) and some other facts, which according to them, were necessary for effective disposal of the suit and also for better pleading. The learned Judge rejected their application for acceptance of additional written statement by his order dated 7.2.2011 on the ground that the suit was at the stage of argument, where there was no scope to accept any additional written statement. Challenging the said order of rejection, the petitioners moved in this Court with the instant Civil Revision, obtained the Rule and an order staying all further proceedings in the suit.

Mr. Probir Neogi, learned Advocate appearing for the petitioners submits that the proposed additional written statement was necessary for better pleading and to determine the real controversies between the

parties. Since the additional written statement would not change the nature and character of the defendants' case, the learned Judge ought to have accepted the same. An amendment of pleading or additional pleading can be made at any stage of a suit/proceeding, even at appellate or revisional stage. Therefore, the learned Judge was not correct to refuse the additional written statement only on the ground that it was filed at the stage of argument. He further submits that in accepting additional pleading, the Court should be lenient as refusal to the same may prejudice the concerned party.

On the other hand, Mr. Abdul Quiyum, learned Advocate appearing for the plaintiff-opposite party submits that in the present suit for specific performance of contract, the genuinity of the sale agreement and its enforceability is the main issue and the previous conduct of one Mobarak Hossain or his wife Kohinoor Begum has no relevancy here. The application for acceptance of additional written statement at the concluding stage of trial is a dilatory tactic of the defendants to drag the suit and therefore, the learned Judge of the trial Court rightly rejected the same. He further submits that amendment of plaint and that of a written statement are not governed by exactly same principle. The defendant should not be allowed to bring alternative and different kind of defense, which introduces a new controversy between the parties. In support of his submission, Mr. Quiyum refers to the case of Abul Kalam Azad and another Vs. Sunhar Ali and others reported in 46 DLR (AD) 130.

We have considered the submissions of the learned Advocates of both the sides and gone through the plaint, written statement filed by the

principal defendant Surjat Ali, since deceased and the additional written statement filed by the petitioners. We have also gone through the decision cited by Mr. Quiyum. In the case cited, the suit was for ejection of defaulter-tenants. The defendants filed an application for amendment of their written statement introducing some new facts and changing their defense from monthly tenancy to permanent settlement, which was not in their earlier written statement. The learned Munsif of the trial Court rejected the said application. In a civil revision brought by the defendants, the High Court Division made the Rule absolute. Leave was granted by the Appellate Division to consider *whether the prayer for amendment of the written statement could be allowed after closure of the plaintiff's case in a suit for ejectment of monthly tenant at sufferance by introducing an inconsistent and new story of payment of salami, etc. which is a totally new case of permanent tenancy in place of monthly tenancy....* The Appellate Division allowed the appeal affirming the order of the Munsif.

In the present case, the suit is for specific performance of contract, execution of which was denied by the principal defendant. In his written statement the principal defendant mentioned about Title Suit No.33 of 2002 in respect of his another property. It was also mentioned that the said Mobarak Hossain and the plaintiff Habibur Rahman collusively filed the present suit, and that they were relation to each other. After death of the principal defendant, his heirs were substituted and filed additional written statement incorporating the result of the said Title Suit No.33 of 2002 and elaborating some facts which were briefly mentioned in the original written statement. Moreover, in the present case there is no change in

defendant's case by way of amendment. Change in defendant's case by way of amendment of written statement and incorporation of subsequent development of facts and elaboration by way of additional written statement are not exactly same. On both the counts, the case cited is distinguishable.

It appears that the principal defendant Surjat Ali, since deceased had flatly denied execution of the sale agreement in his written statement and contended that the present suit was instituted collusively by the plaintiff and the said Mobarak Hossain, earlier who had set up his wife Kohinoor Begum against him (Surjat Ali) by instituting Title Suit 33 of 2002 in respect of his another property. He also stated that the said Mobarak Hossain and the plaintiff Md. Habibur Rahman were relation to each other. Therefore, it cannot be said that the substituted defendants by way of additional written statement have introduced a new fact and controversy between the parties. This is a settled principle of law that pleading can be amended at any stage of suit/proceeding, if it is necessary for better pleading or effective disposal of the suit and it does not change the nature, character and foundation of the suit. The same principle would apply in case of filing an additional written statement.

At the same time, we notice that after substitution in 2005, and after closing the plaintiff's witnesses, the substituted defendants did not take any step to examine their witness, but filed the additional written statement at a belated stage. Considering the facts and circumstances, we think it would be just and proper if the application for acceptance of

additional written statement is allowed with cost and necessary direction for expeditious disposal of the suit is passed.

Accordingly, the Rule is made absolute. The impugned order dated 7.2.2011 passed by the Joint District Judge, Second Court, Dhaka in Title Suit No.36 of 2002 is hereby set aside and the application for acceptance of additional written statements filed by the substituted defendants is allowed with cost of Taka 3000/- (three thousand) only to be paid by them (substituted defendants) to the plaintiff.

The learned Judge of the trial Court is directed to dispose of the suit as expeditiously as possible preferably within six months from receipt of this judgment. No further adjournment will be allowed at the instance of the substituted defendants.

Communicate a copy of the judgment.

Faruque Ahmed, J.

I agree.