Neutral Citation No. - 2024:AHC:65964

A.F.R.

RESERVED

In Chamber

Case :- MATTERS UNDER ARTICLE 227 No. - 9337 of 2023

Petitioner :- Smt. Chanda Kedia And Another
Respondent :- Dwarika Prasad Kedia And Another
Counsel for Petitioner :- Tarun Agrawal
Counsel for Respondent :- Suresh Singh,Rahul Agarwal,Ritesh Singh

Hon'ble Jayant Banerji,J.

1. Heard Shri Tarun Agarwal, learned counsel for the petitioners and Shri Rahul Agarwal, learned counsel appearing for both the respondents. Learned counsel for the respondents stated that the relevant records of the suit are on record and so he does not propose to file a counter affidavit. Therefore, with the consent of the advocates for the parties, the petition was heard and judgment reserved.

2. By this petition, an order dated 26.7.2023 passed by the Additional District Judge, Fast Track Court No. 2 (14th Finance Commission), Gorakhpur, in Civil Revision No. 3 of 2023 (Shri Dwarika Prasad Kedia and another Vs. Smt. Chanda Kedia and another) has been challenged, whereby an order dated 16.12.2022 passed by the trial court in Original Suit No.458 of 2017, rejecting the amendment application 68क-2 filed by the defendant no.1 for amending the joint written statement, was set aside and the matter was remanded to the trial court for deciding the amendment application afresh and on its merits.

3. The background of the case, as evinced from the record of this petition, is that on 1.7.1987, an agreement was entered into between seven persons (family members) at Gorakhpur with regard to pooling their resources and joining hands for purposes of constructing

godowns on land owned by Mathura Prasad Kedia (who was the party No. 1 in the aforesaid agreement) which land was situated at village Ram Nagar, Karjaha, Gorakhpur, and at other places in co-ownership in the proportions mentioned in the agreement and letting out the same on rent to be enjoyed by the parties individually in the same proportion in which they would own the godowns. It was mentioned in the agreement that the land required for construction of the godowns shall be provided by Shri Mathura Prasad Kedia, who owned the land aforesaid situated at village Ram Nagar, Karjaha, Gorakhpur. It was agreed that the entire activity relating to the construction of the godowns and letting them out on rent would be carried on on co-ownership basis with a clear stipulation that each one of the parties to the agreement and/or their successors and assigns shall have such proportions therein as specified in the agreement.

4. After death of Mathura Prasad Kedia, another agreement dated 29.1.1996 was executed between seven parties in respect of the godown and the aforesaid land. Aggrieved by certain unilateral activities being taken by some of the parties to the aforesaid agreements, the plaintiff-petitioners, who were also the signatories of the aforesaid two agreements, filed a suit seeking injunction against the defendant-respondents from letting out on rent the properties mentioned in the agreement in their own name and further restraining them from entering into any agreement on their own. The aforesaid suit was registered as Original Suit No. 458 of 2017 which was filed in the court of the Civil Judge (Senior Division), Gorakhpur. A joint written statement dated 19.3.2018 was filed by the defendant-respondents.

5. It is pertinent to mention here that the defendant-respondent No.1, Dwarika Prasad Kedia, was not a signatory to the agreement of 1.7.1987, but was a signatory to the agreement dated 29.1.1996. However, the defendant-respondent No.2, Prem Lata Kedia, was a signatory to both the aforesaid agreements.

6. A temporary injunction application filed by the plaintiff-petitioners was dismissed by an order dated 23.12.2021, passed by the Additional District and Sessions Judge, Fast Track Court, Gorakhpur in Miscellaneous Appeal No. 18 of 2021 (Dwarika Prasad Kedia and another Vs. Smt. Chanda Kedia and another). The order of the Judge was subjected to challenge before this Court in a petition being Matters under Article 227 No. 1221 of 2022, which came to be allowed by a judgment and order dated 21.7.2022, setting aside the order dated 23.12.2021 and directing the trial court to expedite the disposal of the Original Suit No.458 of 2017 without being influenced with the observations made in the judgment.

7. Thereafter, an application dated 14.10.2022, bearing paper No. 68 क-2, was filed by defendant-respondent No.1 under Order VI Rule 17 CPC seeking amendment in the written statement. It was stated in the application that the father of defendant-respondent No.1, Mathura Prasad Kedia, had executed a will which was kept with his income tax lawyer and which was received after the death of Mathura Prasad Kedia, and on the basis of that will, the aforesaid agreement dated 29.1.1996 was made, but no reference was made of that will by the earlier advocate, due to which certain things were vague and the suit could not be correctly and finally decided unless the averments were clarified and, accordingly, the amendments were necessary.

8. By way of an objection paper No.72C, along with a supporting affidavit dated 18/19.11.2022, objections were filed by the plaintiff-petitioners, in which it was stated that the averments made in the written statement are sought to be nullified by the amendment and a new defence is sought to be set up on the basis of a fraudulent will deed. It was further stated that no details of the will have been mentioned in the amendment application which, therefore, deserves to be dismissed.

9. By an order dated 16.12.2022, the trial court rejected the application for amendment. Aggrieved against the same, Civil

Revision No. 3 of 2023 was filed by the defendants, which came to be allowed by means of the impugned order dated 26.7.2023 which remanded the matter back to the trial court for consideration of the application 68 क-2 afresh.

10. The contention of the learned counsel for the petitioners is that the amendments sought in the written statement run contrary to the existing averments in the written statement and false statements have been made in the amendment application with regard to the alleged will executed by deceased Mathura Prasad Kedia. It is further stated that the narrative of the written statement is sought to be changed by bringing in new facts, based upon a fraudulent will, the details of which were not mentioned in the amendment application. It is further contended that the amendment to the written statement has been filed by only the defendant-respondent No.1 and not jointly by both defendants and, therefore, the amendments sought by only one of the defendants deserve to be rejected.

11. In support of his contention, learned counsel for the petitioners has relied upon a judgment of a coordinate Bench of this Court in the case of **Narendra Singh vs. Bhartendra Singh**[1].

12. Shri Rahul Agarwal, learned counsel for the respondents has stated that the objections of the plaintiff-petitioners are based upon the merits of the amendment application, which cannot be gone into at the stage of consideration of the amendment application itself. It is contended that the objections do not have any relation with the fact as to whether the amendment ought to be allowed in terms of Order VI Rule 17 CPC; that clarification of the written statement is required to ensure that the case is correctly decided and taken to its logical conclusion; that the judgment relied upon by the learned counsel for the petitioners cannot be read as laying down a *ratio decidendi* of the proposition that when a written statement is jointly filed by the

1 2000 (1) AWC 719

defendants, it cannot be amended at the behest of one, when the other defendant does not join him.

13. A joint written statement dated 19.3.2018 was filed by the two defendants. The aforesaid amendment application dated 14.10.2022 was filed by the defendant no. 1 alone, seeking to incorporate paragraph nos. 24अ, 24ब, 24स, 24द, 24य, 24र, 24ल after paragraph no.24 of the written statement. The amendment application is as follows.

"न्यायालय सिविल जज सी०डि० गोरखपुर

वाद सं०– 458/2017

श्रीमती चन्दा केडिया बनाम द्वारिका प्रसाद केडिया आदि

दरखास्त अन्तर्गत आदेश 6 नियम 17 जा०दी०

उपरोक्त मुकदमा में निवेदन है कि प्रतिवादी द्वारा पुराने अधिवक्ता को बदल कर नया अधिवक्ता नियुक्त किया गया और अपील के उपरान्त जब मूलवाद संचालन की बात आयी तो वरवक्त तैयारी मुकदमा यह बात प्रकाश में आई है कि प्रतिवादी नं० 1 के पिता मथुरा प्रसाद केडिया ने अपने जीवनकाल में एक वसीयत लिख रखा था और उस बसीयत को अपने इन्कम टैक्स वकील श्री जी०एस०सरकारी के पास रख छोडा था जो बाद मरने मथुरा प्रसाद केडिया के वह वसीयत प्राप्त हो गई जिसके आधार पर समझौता पत्र दिनांक 29–1–1996 बना और उसका कोई जिक्र प्रतिवादपत्र में पुराने अधिवक्ता द्वारा नहीं किया जा सका है जिसके कारण कुछ अस्पष्टता आरिज है जिसे यदि स्पष्ट नहीं किया गया तो मुकदमे में सही व अन्तिम नतीजे तक नहीं पहुंचा जा सकता है। मुकदमे के सही व अन्तिम नतीजे तक पहुंचने के लिए प्रतिवादपत्र में संशोधन किया जाना न्यायोचित एवं न्यायसंगत है।

अतः प्रार्थना है कि प्रतिवादपत्र में निम्न संशोधन करने की अनुमति दिया जाय।

1– यह कि प्रतिवादपत्र के पैरा 24 के बाद नया पैरा, 24अ, 24ब, 24स, 24द, 24य, 24 र, 24ल को निम्न प्रकार से दर्ज करने की अनुमति दिया जावेः–

'24अ– यह कि प्रतिवादी नं० 1 के पिता मथुरा प्रसाद केडिया ने अपने जीवनकाल में अपनी प्रथम व अन्तिम वसीयत लिख कर अपने इनकम टैक्स के वकील जी०एस०सरकारी को दे रखा था जो बाद वफात मथुरा प्रसाद केडिया के अधिवक्ता महोदय ने परिवार में प्रतिवादी नं० 2 के पति छज्जूराम केडिया व परिवार के लोगों के समक्ष प्रस्तुत किया और उस समय प्रतिवादी नं० 2 के पति व परिवार के लोगों ने मथुरा प्रसाद केडिया के अन्तिम इच्छानुसार रामनगर कड़जहा गोरखपुर की जो गोदाम की जमीन थी वह उनकी पत्नी श्रीमती नानीबाई केडिया के नाम चढ जाय और यदि मथुरा प्रसाद केडिया के जीवनकाल में ही नानीबाई केडिया का देहान्त हो जाता है उस स्थिति में मथुरा प्रसाद केडिया के तीनों लड़को का नाम चढ जायेगा।'

'24 ब– यह कि इसी प्रकार मथुरा प्रसाद केडिया की जो पूँजी एम०के० प्रापर्टी में लगी है वह द्वारिका प्रसाद केडिया को मिलेगा और गोदाम के किराएं में उनका हिस्सा हो जायेगा।'

'24 स– यह कि उक्त वसीयतनामा के आधार पर आपसी समझौता पत्र दिनांक 31–1–1996 को तैयार हुआ और उसमें मथुरा प्रसाद केडिया के अन्तिम इच्छानुसार गोदाम की जमीन श्रीमती नानीबाई केडिया के नाम चढवा लिया जाय, का समझौता हुआ।'

'24 द– यह कि उक्त वसीयतनामा के आधार पर नानीबाई केडिया गोदाम की सम्पूर्ण जमीन की स्वामी मालिक चली आ रही है और उन्हें उस जमीन का पूर्ण अधिकार प्राप्त हो चुका है कत्तई किसी अन्य से कोई वास्ता सरोकार नहीं है।'

'24 य– यह कि वादी नं० 1 के पति व वादी नं० 2 के पिता गिरधारी लाल केडिया प्रतिवादी नं० 1 से बड़े है जौ वह काफी चालाक व मुतफन्नी व्यक्ति है और वह जानबूझकर वसीयतनामा जो मथुरा प्रसाद केडिया द्वारा लिखा गया था को जानते हुए उसका कोई जिक्र वादपत्र में नहीं किया है इसके विपरीत कथन वादी बिलकुल गलत व झूठ है।'

'24 र– यह कि प्रतिवादी एवं वादी नं० 1 के पति व वादी नं० 2 के पिता ने इसी आधार पर दिनांक 29–1–1996 का समझौतापत्र तैयार किया और पुनः एक पारिवारिक व्यवस्था याददाश्त दिनांक 11–9–2001 को लिखा गया।

'24 ल– यह कि याददाश्तनामा दिनांक 11–9–2001 के आधार पर जिस पर नानीबाई केडिया, गिरधानी लाल केडिया, व प्रेमलता केडिया व द्वारिका प्रसाद केडिया के हस्ताक्षर बने है, के आधार पर रामनगर कडजहा की स्थित सम्पत्ति को नानीबाई केडिया ने प्रतिवादीगण के हिस्से में ½ – ½ दे दिया और इस आधार पर प्रतिवादीगण विवादित सम्पत्ति के आधे आधे के स्वामी मालिक काबिज दखील चले आ रहे है।'

'24 व– यह कि इस प्रकार तथाकथित साझेदारी, समाप्त हो चुकी है और उसका कोई लाभ वादीगण प्राप्त करने के अधिकारी नहीं है।'

मैं द्वारिका प्रसाद केडिया, प्रतिवादी सं० 1 — प्रार्थी
तसदीक करता हूँ कि संशोधन आवेदन — (द्वारिका प्रसाद केडिया)
के कुल मजमून मेरे निजी जानकारी से — प्रतिवादी सं० 1
सत्य है तसदीक किया बमुकाम दीवानी — दिनांक– 14.10.22
कचहरी गोरखपुर।
(द्वारिका प्रसाद केडिया)"

14. By an order dated 16.12.2022, the Civil Judge (Senior Division), Gorakhpur proceeded to reject the application for amendment, 68क-2, evidently after analyzing the merits of the amendments sought.

15. The revisional court, by the impugned order dated 26.7.2023, set aside the order dated 16.12.2022 passed by the trial court and

directed it to decide the matter afresh in the light of the observations made. The court observed that it is a matter of evidence whether the Will-deed that is sought to be produced is legal or not and amendment to the written statement should be liberally construed as it is neither changing the nature of the written statement nor withdrawing any admission, and that the trial of the suit had not started.

16. There cannot be a cavil about the legal proposition that while considering an amendment application, a court ought not to enter into the merits of the amendment itself, but rather confine its inquiry for the purpose of determining whether the same is necessary for the purpose of determining the real question in controversy between the parties; to determine that the application is not malafide or an attempt to delay the proceedings; and to determine that the defendant is not attempting to set up a case that would rescind an admission made by him in the written statement. The analysis made by the revisional court is sound and logical, and the order of the trial court was justifiably set aside and the matter remanded.

17. However, a legal issue that is being sought to be raised by the learned counsel for the petitioners is that a joint written statement was filed by the defendants, therefore, it cannot be amended at the behest of one defendant when the other defendants did not join him in filing the amendment application.

18. As stated above, learned counsel for the petitioners has relied upon the judgment of **Narendra Singh** (supra). Orders VI and VIII of the Code of Civil Procedure, 1908[2] do not answer the issue raised by the learned counsel for the petitioners. The word 'party' appears in Order VI, Rule 17 CPC refers to either the plaintiff or plaintiffs on one side and the defendant or defendants on the other side.

19. The amendment to the written statement has only been sought by the defendant no.1, who claims to have come into possession by a

2 CPC

Will allegedly executed by his father, Mathura Prasad Kedia. It appears from the amendment sought that the aforesaid Will has been referred to as the first and last Will of the testator that the property in dispute was bequeathed to the testator's wife, Nani Bai Kedia, and in the event of her death prior to the death of the testator, it would devolve on the three sons of the testator; the investment of Mathura Prasad Kedia in M.K. Properties would go to Dwarika Prasad Kedia (defendant-respondent no.2) and that shall become his share in the rent of the godown; that on the basis of the said Will-deed, the mutual settlement letter dated 31.1.1996 was prepared and in that, as per the last Will of Mathura Prasad Kedia, on the land of godown, the name of Smt. Nani Bai Kedia be entered; that on the basis of Will-deed, Nani Bai Kedia became the owner of the entire land of the godown and she had received full rights with regard to that, and no other person has got any concern with that; that the husband and father respectively of the plaintiff-petitioner nos.1 and 2, Girdhari Lal Kedia, was elder to the respondent no.1 and was a cunning person and had deliberately not referred to the Will-deed of Mathura Prasad Kedia in his plaint; that on this very basis, the defendant and the husband/father of the plaintiff-petitioner nos.1 and 2 got prepared the settlement dated 29.1.1996 and also a memorandum of family settlement dated 11.9.2001; that on the basis of memorandum dated 11.9.2001, the property situated at Ram Nagar, Karjaha, Nani Bai Kedia has given ½ – ½ share each to the defendants and as such, the defendants have become ½ – ½ owners of the property in dispute; that the so-called partnership has come to an end and no benefit of that inures to the plaintiff-petitioners.

20. The observation of the Court in the judgment in **Narendra Singh**, cited by the learned counsel for the petitioners, bars amendment of the written statement at the behest of one defendant when the written statement was jointly filed by all the defendants. Paragraph 5 of the judgment reads as follows:-

> "5. After perusing the written statement filed by the defendant Nos. 1. 2 and 3 as well as the amendment, it seems that the main ingredient which has been sought to incorporate by amendment, are already present in the written statement and the statement made in the written statement appears to be in the context of the suit, inasmuch as in the suit the plaintiff has based his claim on the registered deed of partition dated 23rd March, 1974 alleged to have been acted upon. The defendants have denied the same. In such circumstances, it is not necessary to incorporate the amendments which are unnecessary elaboration of the defence already pleaded in the written statement. Even without the amendment, those facts relating to the question as to whether the deed of partition dated 23rd March, 1974 was genuine or acted upon, as has been pleaded In the written statement itself, can be gone into. The suit was filed some times in 1979, almost 20 years have lapsed. The defendant No. 4, being the son of the defendant No. 1 is sailing in the same boat. He had attempted to incorporate almost identical amendment, once having refused, cannot be brought in by the defendant No. 3 alone in the joint written statement filed by the defendant Nos. 1, 2 and 3 when the defendant Nos. 1 and 2 had not joined him. An amendment of written statement jointly filed by the defendant Nos. 1, 2 and 3 cannot be entertained when filed by only one of them. When the written statement was jointly filed by all the defendants it cannot be amended at the behest of one when other two defendants do not join him."

21. The contention of the learned counsel for the respondents/defendants that the observation in the judgment of **Narendra Singh** (supra), that when a written statement is jointly filed by the defendants, it cannot be amended at the behest of one defendant when other defendants do not join him, cannot be read as a *ratio decidendi*, does not appear to be correct.

22. In the matter of **Jayant Verma & Ors. vs. Union of India & Ors.**[3], the Supreme Court, *inter alia*, also considered a question in paragraph no.53 of that judgment to the effect that could it be said that a previous judgment of the Supreme Court is a declaration of the law under Article 141 of the Constitution, which as a matter of practice, the subsequent bench cannot differ from, being a bench of co-ordinate strength? The Supreme Court considered the question from various perspectives, one of them being the *ratio decidendi* of a

3 (2018) 4 SCC 743

case. The Supreme Court considered and followed its judgment in the case of **Dalbir Singh & Ors. vs. State of Punjab**[4] as follows:-

> "55. In Dalbir Singh v. State of Punjab [Dalbir Singh v. State of Punjab, (1979) 3 SCC 745 : 1979 SCC (Cri) 848 : (1979) 3 SCR 1059] , a dissenting judgment of A.P. Sen, J. sets out what is the ratio decidendi of a judgment : (SCC p. 755, para 22 : SCR pp. 1073-74)
>
> > "22. … According to the well-settled theory of precedents every decision contains three basic ingredients:
> > '(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
> > (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
> > (iii) judgment based on the combined effect of (i) and (ii) above.'
> > For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker : The English Legal System. Butterworths, 1972, 3rd Edn., pp. 123-24.] It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [Qualcast (Wolverhampton) Ltd. v. Haynes, 1959 AC 743 : (1959) 2 WLR 510 : (1959) 2 All ER 38 (HL)] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the Judge is not bound to draw the same inference as drawn in the earlier case."

4 (1979) 3 SCC 745

23. The aforesaid judgment of the Supreme Court in **Jayant Verma** has been referred and followed in the matter of **Career Institute Educational Society vs. Om Shree Thakurji Educational Society** in the order dated 24.04.2023 passed in Petition for Special Leave to Appeal (C) No.7455-7456/2023.

24. As a matter of fact, in the aforesaid case of **Career Institute Educational Society**, another judgment of the Supreme Court in the case of **State of Gujarat & Ors vs. Utility Users Welfare Association & Ors.**[5] was considered, in which judgment the inversion test was applied by the Supreme Court to identify what is the *ratio decidendi* in a judgment. The observations of the Supreme Court, while referring to the cases of **Utility Users Welfare Association** and **Jayant Verma,** are as follows.

> "The distinction between *obiter dicta* and *ratio decidendi* in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, State of Gujarat & Ors. vs. Utility Users' Welfare Association & Ors. and Jayant Verma & Ors. vs. Union of India & Ors.
>
> The first judgment in State of Gujarat (supra) applies, what is called, "the inversion test" to identify what is *ratio decidendi* in a judgment. To test whether particular proposition of law is to be treated as the *ratio decidendi* of the case, the proposition is to be inversed, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case.
>
> In Jayant Verma (supra), this Court has referred to an earlier decision of this Court in Dalbir Singh & Ors. vs. State of Punjab to state that it is not the findings of material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, *albeit* operates as *res judicata*. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the *obiter dicta*. "

5 (2018) 6 SCC 21

25. While applying the aforesaid test in the judgment of **Narendra Singh**, the ratio as emerges therefrom would be that where the case of the defendants is being presented by means of a joint written statement, which is a reflection of their joint defence in the suit, filing of an amendment application by one or more defendants to the exclusion of other defendants, who had preferred that joint written statement, would be barred. If the inversion test is applied in the judgment of **Narendra Singh**, and the ratio indicated in paragraph 5 thereof is removed, then without examining the proposition, the conclusion of the case would not be the same. Further, given the legal problem disclosed by the facts as appearing in the judgment of **Narendra Singh**, the observation of the learned Judge that one of the defendants cannot be permitted to amend the written statement when the other defendants do not join him, who all had jointly filed the written statement, would operate as a precedent.

26. Now, I proceed to discuss further the aspect pertaining to maintainability of an amendment application at the behest of a defendant where the written statement has been jointly filed by all the defendants, given the observation of a bench of this Court in **Narendra Singh**. In the case of **Narendra Singh**, the three defendants therein had filed a joint written statement. Subsequently, the defendant no.4, who was the son of one of the defendants, was added as a party and he filed a separate written statement. The defendant no.4 sought to amend the written statement which was refused by the court by an order dated 3.8.1994. Thereafter, the defendant no.3 filed an application for amendment of the written statement, which was also dismissed by the order dated 21.9.1996 which order was impugned in the case of **Narendra Singh**. The Court noted that in the suit, it was not necessary to incorporate the amendment which was unnecessary elaboration of the defence already pleaded in the written statement. It was observed that even without the amendment, the fact relating to the question as to the genuineness of a deed of partition or it being acted upon, as had been

pleaded in the written statement itself, could be gone into. It was observed that defendant no.4 being the son of defendant no.1 was sailing in the same boat and he had attempted to incorporate almost identical amendment, which once having been refused, cannot be brought in by the defendant no.3 alone in the joint written statement filed by the defendant nos.1, 2 and 3 when the defendant nos.1 and 2 had not joined him. It was held that when the written statement was jointly filed by the defendants, it cannot be amended at the behest of one when the other two defendants do not join him.

27. Filing of joint written statement by all or several defendants is not an uncommon feature in suits. Frequently, a group of defendants having common interests choose to file a joint written statement. At a later stage in the suit, one or more of the defendants, or their successors/legal representatives who step into their shoes, may seek to raise by amendment new grounds of defence that may have arisen after the institution of the suit or the presentation of a written statement or seek any other amendment including a set-off or counter-claim. Whether such an amendment application can be moved by one or more defendants, to the exclusion of the other defendants, by way of amendment in the joint written statement, is required to be considered. Another aspect that may require consideration is whether an amendment application by one or more defendants would be maintainable, to amend a joint written statement which amendment may reflect the interests of each of the defendants who had filed the joint written statement.

28. A bench of Karnataka High Court at Bengaluru in the case of **Sri R.D. Suresh @ Manjunath & Ors. vs. Sri R.A. Manjunath & Ors.**[6] considered a matter where the defendant nos.1 to 5 had filed a common written statement on the basis of a Will and a partition that took place in terms of the said Will. The defendant no.4 filed an additional written statement seeking to assert a counter-claim which was dismissed by the trial court. Also, the defendant no.3 filed an

6 Writ Petition No.34252-57 of 2014 (GM-CPC) decided on 24.6.2015

application seeking leave of the court to file an additional written statement alongwith additional written statement under Order VIII Rule 9 CPC pertaining to the theme of codicil of the testator. The trial court allowed that application which was challenged in Writ Petition Nos.18767-68 of 2010 before the Karnataka High Court which was allowed and the additional written statement so far as it related to codicil was set aside but liberty was reserved to file an amendment application. Thereafter, the defendant no.3 filed an application seeking amendment to incorporate the pleadings relating to codicil which was allowed by the trial court. Challenging that order, Writ Petition No.33997 of 2010 was filed before the High Court which was allowed and the order of the trial court allowing the amendment was set aside. As a next resort, the defendant no.3 filed an application under Order VIII Rule 8 read with Section 151 CPC seeking leave of the trial court to file a separate written statement. The application was allowed. Challenge to the same was made before the High Court in the aforesaid case of **R.D. Suresh,** wherein the observations of the Court are as follows:-

> "14. The point that arises for consideration is, whether the impugned order passed by the court below permitting filing of separate written statement by the third defendant calls for interference by this Court? My answer would be in the affirmative for the following reasons.
>
> 15. In this case, as already stated, the defendant No.3 has made three attempts to bring on the same pleadings. Initially by way of additional written statement, next by way of amendment and now by way of a separate written statement. On the two occasions, the orders passed by the trial court allowing additional written statement and allowing amendment application were subject matter of writ petition Nos.18767-768/2010 and W P No.33997/2010. This court by the order dated 27.7.2010 and 27.3.2014 respectively set aside both the orders. Now by way of the present application, the third defendant wanted to bring on record the same pleadings but by way of separate written statement, which is also allowed by the court below by the impugned order.
>
> 16. It is to be mentioned here that the third defendant joined defendants 1 & 2 and 4 & 5 and filed common written statement and pleaded earlier partition in the year 1988 among the legatees by virtue of the Will dated 3.5.1969. Now the present application is filed by the defendant No.3 alone to contend right over landed properties in question as if

his father late R S Amarendra had one-fourth share who died intestate, there is no partition in 1988 amongst legatees basing the said claim on the basis of codicil dated 10.6.1969 said to have been executed by Sri R V Surappa, now deceased. The third defendant stated that he noticed the codicil only when the room of R V Surappa was cleaned up on 11.3.2008.

17. In the order passed in W P No.18767-768/2010 (GM-CPC) and connected matters disposed of on 27.7.2010 in Para-12, it is stated as follows:

> "12. The them of the codicil is raised for the first time in the additional written statement. I therefore set aside that part of the trial Court's order permitting the additional written statement, which pertains to the codicil. In all other respects, the Trial Court's order and the consequent filing of the additional written statement are left undisturbed".

Therefore, it is clear that averment relating to codicil is rejected by this Court in the above order.

18. In the order dated 27.3.2014 passed in W P No.33997/2010 (GM-CPC) in Para-28, this is what stated by this Court:

> "28.....when joint written statement has been filed, one of the defendants cannot be allowed to take inconsistent stand without the consent of the other defendants. The co-defendants are disputing the codicil. Therefore, the Trial Court was not justified in allowing the application. While it is true, amendments have to be considered liberally. But, it depends upon the facts and circumstances of each case. In the present case, the proposed amendment lacks bona fides and it is highly belated. Therefore, the impugned order cannot be sustained in law."

19. Therefore, it is clear that the averments relating to codicil is already rejected and it is held to be belated. In none of the provisions of Code of Civil Procedure, it is provided for replacement of the written statement filed by a party. The separate written statement sought to be filed by the third defendant is inconsistent and in complete variance with the averments made in the joint written statement filed by him along with the other defendants. The other defendants are not in agreement with the theory of codicil and they are the petitioners in the present writ petitions.

20. …….....

21. The learned counsel and senior counsel for the respondents submit that there is no patent illegality or violation of principles of natural justice in the impugned order and only an opportunity is given to the party to bring on record the subsequent event and therefore this court cannot interfere in such matters under its supervisory jurisdiction. I have given my anxious consideration to the

> contentions and the authorities on which reliance was placed and I am of the view that the third defendant alone is not legally entitled to file a separate written statement when he has already filed joint written statement and the said other defendants are not in agreement with the proposed pleadings which are in complete variance from the original pleadings, this court is definitely entitled to interfere with such an order to correct the same. The trial court has proceeded only on the basis that if the third defendant is not provided opportunity to bring on record the proposed averments by way of separate written statement, it would lead to multiplicity of proceedings. The court below has failed to consider the other facts of the case where the third defendant has already filed common written statement, other defendants are not in agreement with the proposed pleadings, delay in filing such application, proposed pleadings being in complete variance with the original pleadings and the principles of res judicata."
>
> *(emphasis by Court)*

29. The aforesaid two judgments in **Narendra Singh's** case and **R.D. Suresh's** case were followed by a bench of the High Court of Manipur at Imphal in the case of **Dr. M.S. Abdul Khaliq Chishti & Anr. vs. Sheikh Abdul Hye Chishti & Ors.**[7]

30. In the present case, the amendment sought is with regard to the share in the rent of the property in dispute which, in turn, it is contended, is based on the entitlement to the ownership of the property in dispute. Though in a paragraph of the amendment application, the share of the defendants has been stated to be ½ – ½ each with regard to the suit property, pursuant to a bequest in favour of Smt. Nani Bai Kedia, which bequest is apparently based upon a Will of Mathura Prasad Kedia, however, that Will would also be subject to proof. That may also entail consideration of the fact whether the bequest in favour of Smt. Nani Bai Kedia was a bequest for her life time or was it absolute. Under such circumstances, there may arise issues in the future with regard to the entitlement of the defendant no.2, who has not joined in filing the aforesaid amendment application. There is no averment in the amendment application that whether any consent was obtained by the defendant no.1 from the

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defendant no.2 in filing the aforesaid application for amendment. Thus, without a joint application for amendment or without consent of the defendant no.2 with regard to the application for amendment, the amendment application seeking amendment of a joint written statement, if allowed, may prejudice the rights of the defendant no.2. As such, the amendment would not be permissible and the ratio of **Narendra Singh** would squarely apply.

31. There may be various other instances where a serious anomaly may be created by one defendant filing an amendment application leading to jeopardizing the rights and interests of other defendants, who join in filing a written statement. For example, one of them may seek to withdraw an admission made in the joint written statement, or may choose to make an admission. Moreover, such an amendment application may contain averments which may be couched in language that may seem to, ostensibly, serve the interest of all defendants who had joined in the written statement, but may require closer scrutiny by other defendants to understand and verify the averments made.

If the Courts are not vigilant to nip in the bud such a situation from arising, several complications may arise in the future that may complicate issues and unnecessarily delay the outcome of the suit/proceedings including multiplicity of legal proceedings.

32. It is, therefore, held that where a written statement is jointly filed by a group of defendants, it cannot be amended at the behest of one or more such defendants unless the other defendants who are signatories to the joint written statement, expressly consent to the amendments sought.

Even in cases where a ground of defence is raised in an amendment application that appears to reflect the interest of each of the defendants who had filed the joint written statement, the consent of those defendants, who had not moved that amendment application, would be required.

Only after the court has considered this aspect, it may proceed to consider the amendment application as per the extant provisions of Order VI Rule 17 CPC.

33. In the present case, since the matter has been remanded by the revisional court to the trial court, in which order of remand I have found no error, the trial court is required, before adjudicating as to whether the amendment application (68क-2) ought to be allowed or not, to first undertake the exercise of ordering service of the amendment application 68क-2 on the defendant no.2 so that her consent or otherwise, with regard to the amendment application, be obtained. Once such service on the defendant no.2 is found by the trial court to be sufficient, it would duly proceed with the matter in accordance with law.

34. Subject to the observations made above, the impugned judgment and order dated 26.7.2023 passed in Civil Revision No.3 of 2023 is affirmed, and the petition is **dismissed**.

Order Date :- 16.4.2024
SK

(Jayant Banerji, J)