REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1808 OF 2008
(Arising out of SLP (C) No.18511 of 2006)

Gautam Sarup … **Appellant**

Versus

Leela Jetly & Ors. … **Respondents**

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. One Shanti Sarup executed a Will. Respondents 1, 2, 3 and 6 are his daughters. Respondent No.7 Ritu Sarup is the daughter of Respondent No.2. She had an accidental fall and became handicapped.

3. The Will was executed on or about 23.9.1999 bequeathing his properties in equal shares to the appellant and the said Ritu Sarup.

4. Appellant filed a suit in the Court of Civil Judge (Senior Division), Ludhiana, inter alia, for declaration of his title to the suit properties and for a decree of permanent injunction.

Respondent No.6 Leela Jetlley, on being served with the summons appeared through one Shri M.P. Vasudeva, Advocate. She filed a written statement admitting the averments made in the plaint.

5. A counter claim was filed by Respondent Nos.1 to 5. In their written statement, they did not deny or dispute execution of the Will by Shanti Sarup.

6. Respondent No.6, however, filed another written statement denying and disputing the claim of the appellants in toto. She also filed an application on 28.8.2000 for permission to take the first written statement off the records and to file another written statement on the premise that she had not engaged the said M.P. Vasudeva, nor had she filed any written statement through him. She denied and disputed her signatures appearing on the said written statement. The said application was allowed by the learned Trial Judge.

7. A revision petition was filed by the appellant thereagainst. By a judgment and order dated 15.3.2002, the High Court, while setting aside the

said order of the learned Trial Judge dated 12.9.2001 directed it to hold an enquiry at the first instance as to whether the respondent No.6 ever engaged Mr. Vasudeva, Advocate or ever signed the written statement which had been placed on record. It was directed that in the event the findings of the said enquiry go in her favour, it will be open to her to file the second written statement or the one which has been filed by her may be accepted. It was, however, observed :

> "Of course, I am not depriving Smt. Jetly to file an application under Order VI Rule 17 CPC in case the findings are given against Smt. Leela Jetly regarding filing of earlier statement."

8. Pursuant to or in furtherance of the said direction, an enquiry was held and it was opined that respondent No.6 had, in fact, appointed the said Shri Vasudeva as her lawyer and filed her written statement on 30.3.2000. A revision application was filed thereagainst by the respondent No.6 which by reason of an order dated 7.4.2004, was dismissed by the High Court.

9. An application for amendment was thereafter filed by her on 5.11.2004 which was allowed by the learned Trial Court by an order dated 23.2.2005. Appellant moved the High Court invoking its revisional

jurisdiction and by reason of the impugned judgment the same was dismissed opining :

> "Thus, I am of the opinion that the plaintiff is not prejudiced in any manner while allowing defendant No.6 to amend the written statement. The burden of proving the Will is to be discharged by the plaintiff in any case. Whether admissions contained in the written statement dated 30.3.2000 were relevant for proof of Will or such admissions were made erroneously or under mistaken belief or misrepresentation or such admissions are conclusive, are the questions which can be decided only after defendant No.6 is permitted to amend the written statement. It is a disputed question of fact which cannot be decided at the stage of deciding the application for amendment of written statement whether admissions in the written statement dated 30.3.2000 are conclusive and binding on defendant No.6 and to what extent."

10. Mr. Sudhir Chandra, learned senior counsel appearing on behalf of the appellant, would submit :

1. Respondent No.6, in view of admissions contained in her written statement filed on 30.3.2000 , could not have been permitted to resile therefrom.

2. She, having failed in her attempt to set up a plea that she had not engaged Shri Vasudeva as a lawyer and did not put her signature on the written statement, should not have been permitted to amend the

written statement, in view of the fact that she was an attesting witness to the Will and claimed a benefit thereunder.

11. Mr. M.L. Verma, learned senior counsel appearing on behalf of Respondent No.6, on the other hand, submitted

(a) Admission being an evidence against a person making the same, the onus would be on him to show that it was made under some mistake or otherwise and, thus, the amendment of written statement is permissible in law.

(b) Apart from Respondent No.6, six other defendants had denied or disputed the correctness of the Will pursuant whereto an issue was framed and as such the question as to whether she made any admission in her first written statement or not is wholly academic.

(c) Although a person making admission should not ordinarily be permitted to resile therefrom, there does not exist any bar to explain such admission or clarify the same and in that view of the matter such portion of the application for amendment of written statement, which seeks to explain the admission and/or clarify the same should be permitted to be retained.

12. Order VI Rule 17 of the Code of Civil Procedure reads, thus :

> **17. Amendment of pleadings—**The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that is spite of due diligence, the party could not have raised the matter before the commencement of trial."

13. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore.

14. In State of Haryana & Ors. v. M.P. Mohla [(2007) 1 SCC 457] this Court stated :

> "**25.** The law as regards the effect of an admission is also no longer res integra. Whereas a party may not be permitted to resile from his admission at a subsequent stage of the same proceedings, it is also trite that an admission made contrary to law shall not be binding on the State."

15. A thing admitted in view of Section 58 of the Indian Evidence Act need not be proved. Order VIII Rule 5 of the Code of Civil Procedure

provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order XII Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile therefrom.

The decisions of this Court unfortunately in this regard had not been uniform. We would notice a few of them.

16. A Three Judge Bench of this Court speaking through Ray, CJ in Modi Spinning & Weaving Mills Co. Ltd. & Anr. v. Ladha Ram & Co. [(1976) 4 SCC 320] opined :

> "**10.** It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the

> defendants. The High Court rightly rejected the application for amendment and agreed with the trial court."

17. A Two Judge Bench of this Court, without noticing the binding precedent in Modi Spinning (supra), in Panchdeo Rarain Srivastava v. Km. Jyoti Sahay & Anr. [1984 Supp. SCC 594], stated :

> "But the learned counsel for the respondents contended that by the device of amendment a very important admission is being withdrawn. An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn."

Yet again, in Akshaya Restaurant v. P. Anjanappa & Anr. [1995 Supp.(2) SCC 303], the following observations were made by the Court :

> "We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in para 6 of the written statement a definite stand was taken by subsequently in the application for amendment it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 CPC in permitting amendment of the written statement."

[See also Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary [1995 Supp. (3) 179]

18. The question came up for consideration before another Division Bench in Heeralal v. Kalyan Mal & Ors. [(1998) 1 SCC 278], wherein noticing the aforementioned decisions, Modi spinning's decision was followed. Akshaya Restaurant (supra) was held to have been rendered per incuriam.

Other decisions which were cited at the Bar were distinguished stating:

> "**10.** Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as ruled by a three-member Bench of this Court. This aspect was unfortunately not considered by the latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was *per incuriam* being rendered without being given an opportunity to consider the binding decision of a three-member Bench of this Court taking a diametrically opposite view.
>
> **11.** We were then taken to another decision of this Court in the case of *Panchdeo Narain Srivastava* v. *Jyoti Sahay*. In that case the plaintiff was held entitled to amend his plaint by submitting that though earlier he stated that the defendant was uterine brother, the plaintiff by amendment in his plaint could submit that the defendant was his

> brother and the word "uterine" could be dropped. Even in that case the main case put forward by the plaintiff did not get changed as the plaintiff wanted to submit that the defendant was his brother. Whether he was uterine brother or real brother was a question of degree and depended on the nature of evidence that may be led before the Court. Therefore, the deletion of the word "uterine" was not found to be displacing the earlier case of the plaintiff. On the facts of the present case also, therefore, the said decision cannot be of any assistance to the learned counsel for the respondents.
>
> **12.** In our view, therefore, on the facts of this case and as discussed earlier, no case was made out by the respondents, contesting defendants, for amending the written statement and thus attempting to go behind their admission regarding 5 out of 7 remaining items out of 10 listed properties in Schedule A of the plaint."

19. Hiralal (supra) has been recently noticed by this Court in Sangramsinh P. Gaekwar & Ors. v. Shantadevi P. Gaekwad (Dead) through LRs. & Ors. [(2005) 11 SCC 314], wherein it is stated :

> **"215.**Admissions made by Respondent 1 were admissible against her proprio vigore.
>
> **216.** In *Nagindas Ramdas* v. *Dalpatram Ichharam* this Court held :
>
> > "... Admissions if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of

> the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the ot her hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

(See also *Bishwanath Prasad* v. *Dwarka Prasad*.)

217. In *Viswalakshmi Sasidharan* v. *Branch Manager, Syndicate Bank* this Court held :

> "On the other hand, it is admitted that due to slump in the market they could not sell the goods, realise the price of the finished product and pay back the loan to the Bank. That admission stands in their way to plead at the later stage that they suffered loss on account of the deficiency in service."

218. Judicial admissions by themselves can be made the foundations of the rights of the parties."

Modi spinning (supra) and Hiralal (supra) were followed therein.

Yet again in Union of India v. Pramod Gupta (Dead) by LRs. & Ors. [(2005) 12 SCC 1] this Court held :

> "Before an amendment can be carried out in terms of Order 6 Rule 17 of the Code of Civil Procedure the court is required to apply its mind on several

> factors including viz. whether by reason of such amendment the claimant intends to resile from an express admission made by him. In such an event the application for amendment may not be allowed. (See *Modi Spg. & Wvg. Mills Co. Ltd.* v. *Ladha Ram & Co.*, *Heeralal* v. *Kalyan Mal* and *Sangramsinh P. Gaekwad* v. *Shantadevi P. Gaekwad*)"

20. We may, at this stage, notice some decisions of this Court whereupon strong reliance has been placed by Mr. Verma.

In Punjab National Bank v. Indian Bank & Anr. [(2003) 6 SCC 79], this Court opined that an application for amendment may be allowed to clarify the relief which had been prayed for even in the plaint, particularly, when no prejudice in this behalf would be caused to the other party to the lis.

In Rajesh Kumar Aggarwal & Ors. v. K.K. Modi & Ors. [(2006) 4 SCC 385], while emphasizing on the underlined principles of Order VI Rule 17 of the Code of Civil Procedure, it was held :

> **"15.** The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

> **16.** Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.
>
> **17.** In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.
>
> XXX XXX XXX
>
> **20. …** The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. There is a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this Court and the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice."

These decisions for the reasons stated supra are not applicable in the instant case.

21. Recently, in Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors. [(2007) 5 SCC 602], this Court observed :

> "**26.** Therefore, it was neither a case of withdrawal of admission made in the written statement nor a case of washing out admission made by the appellant in the written statement. As noted herein earlier, by such amendment the appellant had kept the admissions intact and only added certain additional facts which need to be proved by the plaintiff and Defendants 2 to 8 to get shares in the suit properties alleged to have been admitted by the appellants in their written statement. Accordingly, we are of the view that the appellants are only raising an issue regarding the legitimacy of the plaintiff and Defendants 3 to 7 to inherit the suit properties as heirs and legal representatives of the deceased Appasao. Therefore, it must be held that in view of our discussions made hereinabove, the High Court was not justified in reversing the order of the trial court and rejecting the application for amendment of the written statement."

22. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

23. An explanation can be offered provided there is any scope therefor. A clarification may be made where the same is needed.

We will assume that despite the amendments made by the Code of Civil Procedure (Amendment) Act, 1976, amendment of pleadings being procedural in nature, the same should be liberally granted but as in all other cases while exercising discretion by a the court of law, the same shall be done judiciously.

24. In this case, respondent No.6 accepted the case of the appellant in its entirety. It went to the extent of accepting the plea of the appellant that his suit, claiming half share in the property left by his father, may be decreed. Each and every contention of the plaintiff-appellant was accepted by respondent No.6. The only explanation which could be offered by her was that the purported admission had been taken from her by playing fraud on her and she, therefore, was not bound thereby.

25. If, she had not engaged Shri Vasudeva as her advocate or had not put her signature on the written statement, the purported contention contained in her written statement filed on 30.3.2000 might not constitute 'admission' in the eyes of law. In such a situation, in law, she must be held to have not filed any written statement at all. It was bound to be taken off the records and substituted by a written statement which was properly and legally filed.

Such a contention raised on the part of respondent No.6 having been rejected by the learned Trial Judge as also by the High Court, in our opinion, the submission of Mr. Verma that she should be permitted to explain her admissions does not and cannot arise.

26. We are herein concerned with her right to maintain an application for an amendment of the written statement when her second written statement has not been accepted. Submission of Mr. Verma that in any event other respondents having denied and disputed the genuineness of the Will and an issue in that behalf having been framed, the appellant in no way shall be prejudiced if the amendment of the written statement be allowed, cannot be accepted. In support of the said contention, strong reliance has been placed by Mr. Verma on Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy & Ors. [(2001) 8 SCC 115]. This Court therein was concerned with filing of additional written statement. This Court therein was not concerned with a case where a party to the suit was resiling from the admissions made by him earlier. In that case, the plaintiff was claiming title of 1/3rd share in the property. During the pendency of the suit, permission was sought for adducing additional evidence to prove the testamentary succession by producing the registered Will dated 20.8.1984. The said application was allowed. A revision application filed thereagainst

was also allowed. The first defendant, as a retaliatory measure, sought for an amendment questioning the legality of said Will dated 20.8.1994 which was dismissed. The revision application filed thereagainst as also the application for adduction of additional evidence filed by defendant No.1 was disposed of by an order impugned before this Court. It were in the aforementioned fact situation, it was Court observed :

> **"9.** Rules governing pleadings and leading of evidence have been incorporated to advance the interests of justice and to avoid multiplicity of litigation. If the claim of the plaintiff Dondapati Narayana Reddy is based upon the will dated 20-8-1994 executed by Dondapati Tirumala Ramareddy, the defendant-appellant has a right to seek the amendment of his written statement incorporating the plea sought to be introduced by way of proposed amendment. Such a prayer cannot be denied on hypertechnical grounds. The amendment should, generally, be allowed unless it is shown that permitting the amendment would be unjust and result in prejudice against the opposite side which cannot be compensated by costs or would deprive him of a right which has accrued to him with the lapse of time. Amendment may also be refused, if such a prayer made separately, is shown to be barred by time. Neither the trial court nor the High Court has found the existence of any of the circumstances justifying the rejection of the prayer for amendment of the written statement. Whether or not the amendment is allowed, the trial court is otherwise obliged to decide the validity of the disputed will which is the basis of the suit filed by the plaintiff. We are of the opinion that the courts below were not justified in rejecting the

> prayer of the defendant seeking amendment of his written statement.
>
> **10.** In view of the fact that the validity of the will was sought to be challenged by way of amendment, the plaintiff acquired a right to lead evidence to prove its authenticity. Otherwise also when the basis of the suit was the will dated 20-8-1994, the interests of justice demanded that the plaintiff should have been allowed an opportunity to lead additional evidence to prove its validity.**"**

The said decision, therefore, is not applicable to the facts and circumstances of the present case.

27. It may be true that even in this case, the Trial Court was bound to determine the issue in regard to the validity of the Will dated 23.9.1999, but such an issue has not been and cannot be raised at the instance of respondent No.6. The decision, therefore, cannot have any application in the instant case.

28. We, therefore, are of the opinion that in the facts and circumstances of the case, the impugned judgment cannot be sustained. It is set aside accordingly. The Appeal is allowed with no order as to costs.

……..……J.
[S.B. Sinha]

……J.
[V.S. Sirpurkar]

New Delhi
March 7, 2008