Before J. V. Gupta, J.

RAJINDER KISHORE AND OTHERS,—*Petitioners.*

versus

KESAR DASS AND OTHERS,—*Respondents.*

Civil Revision No. 319 *of* 1985

May 7, 1985

Code of Civil Procedure (V of 1908)—*Order* 6, *Rule* 17—*Amendment of pleadings at the appellate stage—Suit for possession of a shop—Defendant pleading that the joint Hindu family firm was the tenant—Trial court decreeing the suit and rejecting the defence—Appeal against the decree filed—Written statement sought to be amended at the appellate stage by pleading that the Karta of the family was a contractual tenant—Defendant pleading inadvertance and lack of education as the reason for the delay in seeking amendment—Such amendment—Whether should be allowed at the appellate stage—Explanation for delay furnished by the defendant—Whether sufficient.*

Held, that there is no prohibition against an appellate court permitting amendment of the pleadings at the appellate stage but the appellate court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and if made at the appellate stage, the reason why it was not sought in the trial Court. Where the only reason given by the defendant in his application for seeking amendment of the written statement was that it was by way of inadvertance and because he was not educated and well conversant with law that the proposed plea could not be taken earlier, if this sweeping plea is allowed, then practically in every case the question of explaining the delay in seeking the proposed amendment will become redundant. A party seeking amendment of the pleadings is required to give cogent reasons than mere inadvertence for not taking the said plea earlier. Since the jurisdiction of the appellate court is further limited because after the passing of a decree the rights of the parties come into being, a very strong case is to be made out why the plea sought to be taken now could not be taken earlier. The plea taken by the defendant earlier in the trial court was that it was the joint Hindu family firm which was the tenant. After having lost in the trial court on the said plea, he then wanted to take a new plea that Karta of the family was a contractual tenant on the demised premises. This plea was very much available to him

earlier. Having lost in the trial court, he could not be allowed to take this contradictory plea in appeal. In any case, no case was made out by the defendant for seeking amendment of the written statement at the appellate stage.

... (Para 4).

Petition under section 115 of C.P.C. for revision of order of the Court of Shri R. D. Aneja, Additional District Judge, Gurgaon, dated 3rd January, 1985 accepting the petition on behalf of the appellants and allowing to amend the written statement, as prayed for, subject to payment of Rs. 200 as costs to the other party.

C. B. Goel, Advocate, *for the Petitioner.*

V. K. Jain, Advocate, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.

(1) The plaintiffs-petitioners filed the suit for possession in respect of the shop situated within the municipal limits of Gurgaon, on the allegations that it was originally let out in favour of Uttam Chand on a monthly rent of Rs. 35,—*vide* rent note, dated July 15, 1953. After his death in the month of June, 1981, his sons Kesar Das and others, defendants, had been in illegal and forcible possession thereof. The plea taken in the written statement was that the tenancy was in favour of the joint Hindu family firm styled as M/s Uttam Chand Kesar Das and that the rent note was executed by Uttam Chand in his capacity as the manager and the *Karta* thereof. The trial Court negatived the plea of the defendant and consequently, decreed the plaintiffs' suit,—*vide* judgment and decree, dated April 28, 1984. Dissatisfied with the same, the defendants filed the appeal on May 11, 1984. During the pendency of the appeal, the defendants moved the application, dated September 12, 1984, whereby they sought the amendment of the written statement. The amendment sought was that after the execution of the rent note a new agreement of tenancy had come into existence by novation of the contract as the rent came to be increased and that after the death of their father who was a contractual tenant; rent being payable from month to month; they had acquired the status of a tenant as the contractual tenancy was heritable. The said application was opposed on behalf of the plaintiffs. However, the learned Additional District Judge, Gurgaon, came to the conclusion that the defendants

had not sought to raise any inconsistent plea and, therefore, there was no question of any prejudice being caused to the plaintiffs. According to the learned Additional District Judge, the defendants clearly asserted that they could not raise the plea before the trial Court due to inadvertence as they were not educated and well conversant with law. Consequently, the application for amendment of the written statement was allowed. Dissatisfied with the same, the plaintiffs have filed this revision petition in this Court.

2. The learned counsel for the petitioners, contended that the plea sought to be taken by way of the proposed amendment in the written statement was contradictory to the plea already taken by the defendants earlier in the written statement. In any case, argued the learned counsel, there was no cogent explanation in the application why the plea raised in appeal could not be taken in the trial Court. The very fact that the application was filed during the pendency of the appeal proves that the same was not *bona fide* and was filed with an ulterior motive to delay the proceedings. In support of the contention, the learned counsel relied upon *Ranjit Kaur* v. *Ajaib Singh* (1), On the other hand, the learned counsel for the defendants submitted that even if the order allowing the proposed amendment of the written statement was wrong, the same could not be interfered with in the revisional jurisdiction. It was also submitted that the delay in filing the application itself was no ground for not allowing the amendment. Besides, argued the learned counsel, the proposed plea was not contradictory and in any case, it being necessary for determining the real controversy between the parties, the same has been rightly allowed by the lower appellate Court. In support of the contention, the learned counsel relied upon *Raghbir Prashad* vs. *Chet Ram,* (2), *Bikram Dass* vs. *Nirmal Singh,* (3), *and Ishwardas* vs. *State of Madhya Pradesh* (4).

3. I have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

4. Of course, there is no prohibition against an appellate Court permitting amendment of the pleadings at the appellate stage as observed by the Supreme Court in *Ishwardas's case* (supra)). At

(1) 1984 R.L.R. 348.
(2) 1971 C.L.J. 612.
(3) 1981(2) R.L.R. 101.
(4) A.I.R. 1979 S.C. 551.

the same time, it has also been observed therein that all that is necessary is that the appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial Court. In the case in hand, the only reason given by the defendants in their application for seeking amendment of the written statement was that it was by inadvertence and because they were not educated and well conversant with law that the proposed plea could not be taken earlier. If this sweeping plea is allowed, then practically in every case, the question of explaining the delay in seeking the proposed amendment will become redundant. In my considered opinion, a party seeking amendment of the pleadings is required to give cogent reasons than mere inadvertence for not taking the said plea earlier. Since the jurisdiction of the appellate Court is further limited because after the passing of a decree the rights of the parties come into being, a very strong case is to be made out why the plea sought to be taken now could not be taken earlier. In the present case, no such cogent explanation has been given. The approach of the lower appellate Court in this behalf is wrong, illegal and misconceived causing failure of justice. The plea taken by the defendants earlier in the trial Court was that it was the joint Hindu family firm which was the tenant. After having lost in the trial Court on the said plea, now they wanted to take a new plea that Uttam Chand was a contractual tenant on the demised premises. This plea was very much available to them earlier. Having lost in the trial Court, they could not be allowed to take this contradictory plea in appeal. In any case, no case was made out by the defendants for seeking amendment of the written statement at the stage. As observed earlier, the approach of the lower appellate Court in this behalf was wrong and illegal, and it has thus acted illegally and with material irregularity in the exercise of its jurisdiction.

5. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside. It is directed that the appeal be disposed of on merits in accordance with law. The parties have been directed to appear in the Court of the Additional District Judge, Gurgaon, on May 30, 1985.

N. K. S.