

CASE NO.:
Appeal (civil) 3007 of 2008

PETITIONER:
M.C.Agrawal HUF

RESPONDENT:
M/s. Sahara India & Ors

DATE OF JUDGMENT: 28/04/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT
O R D E R
Non-Reportable

CIVIL APPEAL NO.3007 OF 2008
(Arising out of SLP)No.14462 of 2007)

1. By an order dated 27th of August, 2007, we issued notice in the present special leave petition and granted interim stay of all further proceedings in Suit No.M-73/2007 pending before the Additional District Judge, Delhi. In compliance with our notice, the respondent has entered appearance. Counter affidavit has already been filed. Learned counsel appearing on behalf of the petitioner submitted that no rejoinder affidavit is required to be filed and the matter can be disposed of. Such being the stand taken by the learned counsel for the parties, we grant leave and take up the hearing of the appeal.

2. This appeal relates to rejection of an application for amendment of plaint filed at the instance of the plaintiff/appellant in a suit for eviction, mesne profit and for mandatory injunction. The suit was, however, decreed ex-parte and an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree was rejected by the trial court as well as by the High Court, but the orders of the trial court as well as of the High Court were set aside by this Court and the suit was restored to file. When the suit was restored to file, the plaintiff/appellant filed an application for amendment for deletion of the prayer for delivery of air tickets and for consolidating the same with the prayer of mesne profits as under:
"Award mesne profits equivalent to the rent payable in respect of the premises and the value of the air tickets payable by defendant as determined by this Court."

3. Consequential amendment was also sought

in paragraph 12 of the plaint. The trial court declined the amendment solely on the ground that the relief for the delivery of air tickets was earlier declined in the ex-parte decree and the petitioner, therefore, could not ask indirectly what was declined to them directly. Feeling aggrieved, the appellant had filed a revision application before the High Court which also affirmed the order of the trial court. The High Court by the impugned order while holding that the amendment could not have been denied on the basis of the ex-parte decree which had already been set aside, refused the prayer for amendment on the ground that contractual use and occupation charges would not be necessary for the purpose of determination of the mesne profits. Accordingly, the order of the trial court was affirmed and the application for amendment of the plaint was rejected.

4. Having heard the learned counsel for the parties and after going through the plaint as well as the application for amendment of the plaint and the objections filed by the respondent, we do not find any ground to refuse the prayer of the appellant to amend the plaint in the manner they have prayed for. While rejecting the application for amendment of the plaint, it was held by the High Court that the amendment was not necessary nor germane to the controversy between the parties for the reason that claim for mesne profits/damages had to be dehors the contract between the parties. It was further observed that measure of mesne profits/damages would be the rental fetched by similar situated properties in the vicinity over the period mesne profits was being claimed. Upon these observations, the prayer for amendment of the plaint was rejected. In our view, the amendment of the plaint sought for by the plaintiff/appellant was necessary in deciding the real controversy between the parties. It is always open by way of an amendment to amalgamate the two reliefs in one suit. That apart, at the time of allowing or refusing to amend the plaint, it is not open for the Court to decide the merits of the suit which can only be gone into and decided by it at the time of decision of the suit. The plaintiff/appellant is entitled to plead and prove the amount of rent and the equivalent amount of benefit received out of the letting out of the property to show the contractual rent of use and occupation charges. On the basis of the lease agreement, it is clear that the mesne profit/damages cannot be awarded less than the contractual rate of use and occupation charges. Therefore, in the event of allowing the amendment of the plaint in the aforesaid circumstances, the nature of the suit shall

not be changed. Therefore, in our view, there was no reason as to why the prayer for amendment of the plaint should not be allowed. In our view also, the payer for amendment of the plaint was necessary in order to adjudicate the real controversies between the parties, i.e. with respect to the quantum of the mesne profits/damages.

5. Accordingly, we do not find any reason why the prayer for amendment of the plaint as prayed for by the appellant could be refused.

6. For the reasons aforesaid, the impugned orders are set aside and the application for amendment of the plaint is allowed. The appellant is directed to file an amended plaint within a period of two weeks from the date of supply of a copy of this order and the defendant/respondent shall be entitled to file additional written statement within a fortnight from the date of filing an amended plaint by the appellant.

7. In view of the discussions made herein above, the impugned orders are set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs.