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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**CS(OS) 2371/2015**

**DELHI TRANSPORT CORPORATION**

..... Plaintiff

Through: Mr. Ram Kumar, Advocate.

versus

**VINA JASWANT CHADDHA & ORS**

..... Defendants

Through: Mr. Sunil Dalal, Mr.Devashish Bhadauria & Mr.Kashish Narang, Advocates for D-3 to D-5.

Mr. Devesh Singh, ASC (Civil) GNCTD with Ms.Sukriti Ghai, Advocate for D-7 to D-9.

Mr. Sanjay Kumar Pathak, Mr.K.K. Kiran Pathak, Mr. M.S. Akhtar, Advocates for D-10/LAC.

Mr.Beenashaw N. Soni, ASC for D-11/DDA.

Mr. Mohit K. Daraad, Proxy Counsel for Mr. Chandra Prakash, Advocate for D-12/DMRC

(M:-9810834624).

SI Tinku Shokeen, PS Tilak Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

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**31.10.2019**

**I.A. 8508/2016(Application on behalf of plaintiff for direction to respondent no.7 to provide police aid to the plaintiff for construction of boundary wall)**

1. Learned counsel for the plaintiff seeks leave to withdraw this application with liberty to file a fresh application for the same relief, if necessary, at a subsequent stage of the proceedings.

2. The application is dismissed as withdrawn with liberty as

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aforesaid.

**I.A. 2381/2017(Application under Order VI Rule 17 for amendment of written statement filed on behalf of defendant nos. 3 to 5)**

1. This is an application by the defendant nos. 3 to 5 for amendment of their written statement.
2. The plaintiff has filed the suit against several defendants contending that it is the owner in possession of the plot/land falling in Khasra No. 15/17 min. admeasuring 1 Bigha 4 Biswa (1400 sq. yards approx.) situated in the revenue district of village Tatarpur, Rajouri Garden, West Delhi. The plaintiff has sought a declaration to this effect and a consequent injunction against the defendants.
3. In the written statement filed by the defendant nos. 3 to 5 on 28.01.2016, the said defendants have *inter alia* averred that they have obtained the title and possession of the suit property pursuant to a registered sale deed dated 06.12.2013.
4. In the present application filed on 20.02.2017, the defendant nos. 3 to 5 contend that the documents filed by the plaintiff are not with respect to the property as described in the plaint but with respect to a property in village Khayala. The amendments are directed at incorporating this additional plea.
5. Having heard counsel for the parties, I am of the view that the amendments are liable to be allowed. The proposed amendments are only intended to support the case of the defendant nos. 3 to 5 that they are the owners of the suit property, inasmuch as the new plea challenges the plaintiff's assertion with regard to the title in respect thereof. The defence



is, thus, not an entirely new one or inconsistent with any admission made in the original written statement. The suit is at a pre-trial stage and issues have not been framed therein.

6. In such situations, the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 have been construed liberally. In the context of the amendment of the written statements, reference may particularly be made to the judgment of the Supreme Court in *Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors.* (2007) 5 SCC 602, wherein the Court held as follows:-

*“19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.*

*20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see B.K. Narayana Pillai v. Parameswaran Pillai [(2000) 1 SCC 712] and Baldev Singh v. Manohar Singh [(2006) 6 SCC 498]). Even the decision relied on by the plaintiff in Modi Spg. [(1976) 4 SCC 320] clearly recognises that inconsistent pleas can be taken in the pleadings. In this*



*context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary [1995 Supp (3) SCC 179] . In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi case [1995 Supp (3) SCC 179] as follows: (SCC p. 180, para 3)*

*“3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his written statement under Order 6 Rule 17 CPC by taking a contrary stand than what was stated originally in the written statement. This is opposed to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action.”*

*21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. [AIR 1957 SC 357] this Court observed*



*“that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event”.*

*In that case this Court also held*

*“that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice”.*

22. *Keeping these principles in mind, namely, that in a case of amendment of a written statement the courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”*

7. The same approach has been adopted by the Court in *Sushil Kumar Jain vs. Manoj Kumar* (2009) 14 SCC 38, which are extracted as follows:-

*“12. In our view, having considered the averments made in the application for amendment of the written statement, it cannot be said that in fact neither any admission was made by the appellant in his original written statement nor had the appellant sought to withdraw such admission made by him in his written statement. That apart, after a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written*



*statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.*

*13. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle.*

*“15. ... Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action.”  
(See Baldev Singh v. Manohar Singh [(2006) 6 SCC 498: AIR 2006 SC 2832] , SCC p. 504, para 15.) Similar view has also been expressed in Usha Balashaheb Swami v. Kiran Appaso Swami [(2007) 5 SCC 602 : AIR 2007 SC 1663] .”*

8. For the aforesaid reasons, the application is allowed and the written statement of defendant nos. 3 to 5 is permitted to be amended as proposed.

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1. In view of the order passed in I.A. 2381/2017, the amended written statement of defendant nos. 3 to 5 dated 20.02.2017 is taken on record. The plaintiff may file an amended replication within two weeks alongwith any documents upon which they seek to rely.
2. Parties will also file affidavits of admission/denial of each others' documents within four weeks.
3. List before Joint Registrar for marking of exhibits on 12.12.2019.
4. List before the Court on 11.03.2020.

**PRATEEK JALAN, J**

**OCTOBER 31, 2019/ 'pv'/s**  
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