

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 1733 of 2015
Date of Decision: 11.3.2015.

Satpal Goel

.....Petitioner

Versus

Surinchala Handa

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Promila Nain, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 6.2.2015 (Annexure P-1) whereby application moved by the petitioner under order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the written statement, was dismissed.

Learned counsel for the petitioner has submitted that during the pendency of the suit, petitioner came to know that he had been defrauded by the respondent by creating false liability qua the joint property by obtaining C.C. limit loan from Punjab National Bank and the respondent had also got retail outlet of Bharat Petroleum Corporation Limited and installed a petrol pump in the joint land. Learned counsel has further submitted that in the facts and circumstances of the present case, the amendment in the written statement sought by the petitioner, was very necessary. In support of her arguments, learned counsel has placed reliance on

'Usha Balashaheb Swami and others versus Kiran Appaso

Swami and others, 2007(2) R.C.R. (Civil) 830, wherein it was held as under:-

“18. From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

19. It is now well-settled by various decisions of this Court as well as those by High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. In this connection, the observation of the Privy Council in the case of Ma Shwe Mya v. Maung Mo Hnaung [AIR 1922 P.C. 249] may be taken note of. The Privy Council observed:

"All rules of courts are nothing but provisions intended

to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

20. *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."*

Learned counsel for the petitioner has next placed reliance on the decision of Apex Court in '**Revajeetu Builders and Developers versus Narayanaswamy and Sons and others**', wherein it was held as under:-

"67. On critically analyzing both the English and Indian

cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

Learned counsel for the petitioner has further placed reliance on '**Baldev Singh and others versus Manohar Singh and another 2006(3) R.C.R (Civil) 844**, wherein it was held as under:-

“17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that

amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.”

Order 6 Rule 17 CPC reads as under:-

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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, as per the above provision, the Court has ample power to allow amendment of the pleadings as may be necessary for the purpose of determining the question in controversy between the parties.

In the present case, respondent has filed suit for specific performance of agreement to sell dated 14.2.2008. Petitioner filed his written statement. Now by way of amendment, petitioner wants to take up the plea that he has been defrauded by the respondent by fraudulently obtaining C.C. limit loan from the bank and by getting the retail outlet of Bharat Petroleum Corporation Limited on the joint land by forging his signatures. The said acts of fraud, if any, committed by the respondent, are not relevant qua the controversy involved in the present case. In the present case, the controversy involved between the parties is with regard to execution of agreement to sell in question. The other acts, if any, committed by the respondent have no bearing on the present case. It has been noticed by the Trial Court that petitioner has already filed a criminal complaint against the respondent qua the alleged forgery.

In the facts and circumstances of the present case, the learned Trial Court had rightly dismissed the application moved by the petitioner under Order 6 Rule 17 CPC for permission to amend the written statement.

I have gone through the judgments relied upon by the learned counsel for the petitioner but the same fail to advance the

case of the petitioner as they are not applicable to the facts of the present case.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 11, 2015
Gurpreet