

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1875 of 2015

Date of Decision.17.03.2015

M/s Holyster Industries and another

.....Petitioners

Versus

Pardeep Paliwal and others

.....Respondents

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Ashish Gupta, Advocate and
Ms. Mannu Chaudhary, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The petition for amendment to the written statement was filed in the year 2014 in a suit which was instituted in the year 2006. The suit was for specific performance of an agreement executed by a partnership in whose favour there had been allotment of property by HUDA. In the statement originally filed, the contention was that the agreement is not a valid agreement and one of the persons who was alleged to have signed was actually retired from partnership even in the year 1991. There had been a reference to the fact that in relation to the dealings with the plaintiff and the defendant, there had been registration of complaint in FIR No.727 dated 01.12.2006 imputing fraud as having been committed by the plaintiffs. It was also stated that the pre-requisite for the validity of the agreement viz; passing of consideration and free consent had not been fulfilled and the document

had not been brought by free consent between parties.

2. The plaintiff would seek to contend that the impleadment of defendants Nos.3 and 5 was not necessary and it was bad for misjoinder of parties. It was further contended that HUDA itself was not a party to the contract and therefore, an impleadment of HUDA as 5th defendant was also bad in law as one instituted against the person who was not a necessary party. The further contention was that the agreement itself was not true and the 2nd defendant had been taken in the car to unknown place and threatened for life and dire consequences and his signatures have been obtained on various blank papers and typed papers. The reference to a criminal complaint No.727/2006 was again reiterated but it was brought for the first time in the amendment that the consideration alleged to have been paid by making a deposit in favour of the partnership was not true. There were other contentions raised regarding the equitable and discretionary reliefs as being not available to the plaintiffs. The defendant had also sought to make a reference about the fact that the plaintiff's wife had also obtained an agreement in her favour and the document was not gone through and the fresh agreement had been written. All these according to the defendants were clarificatory in nature and no prejudice could be caused if amendment is to be brought.

3. Learned counsel for the petitioners would refer to a large body of case laws and to our importance of what was read before me from the decisions of the Supreme Court would be the decision in **Baldev Singh and others Vs. Manohar Singh and another 2006(6) SCC**

498 and yet another judgment in **M/s Estralla Rubber Vs. Dass Estate**

(Pvt.) Ltd. 2001(8) SCC 97. The law relating to amendments came for a change by Act of 46/1998 and by Act of 22/2002. The attempt through the amendment was to bring a certain amount of discipline to be observed by parties who will not bring changes in pleadings at the end of the trial and stall the proceedings with prospect of stay orders from higher forums as well. The requirement as it now stands is that no application for amendment would be allowed after the trial has commenced, unless the Court would come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The test of the correctness of the order would be to see whether the impugned orders suffered from the vice of non-consideration of material issue of whether the plaintiff was in some way prevented from taking up a plea which he could not have done at any time when the original statement was filed.

4. I have already extracted some of the important features of the amendment. The first contention was that some of the defendants who had been impleaded as parties ought not to have been impleaded, for, they have retired from partnership and they are bad for misjoinder of parties. The objection regarding the non-joinder or the mis-joinder of the parties ought to be taken immediately and they cannot be brought at any time, for, suit itself cannot be defeated by reason of such misjoinder. Order 1 Rule 9, therefore, lays down a rule of procedure that no suit will be defeated by reason of misjoinder or non-joinder of parties. This is not, therefore, an amendment which should be brought at any time the way a party fancies. There is also another contention that HUDA itself is not a privy to the contract and therefore, could not

have been impleaded. As a point of law, it is an erroneous contention, for, Section 13 of the Specific Relief Act details the right of purchaser or lessee against a person with no title or imperfect title and the Section makes possible that if a concurrence of yet another person was necessary, the Court shall make possible such a concurrence to be obtained through the Court decree. If the property was, therefore, the property of HUDA and the defendants were the allottees with equitable right of purchase from HUDA, the latter would be a proper party to such a proceeding in terms of Section 13. The contention taken, therefore, that HUDA was not a party was not a point which could be taken at the belated stage after 8 years after the institution of the suit.

5. The further contention which has been taken is that the 2nd defendant had been taken in a car and his signatures had been taken on blank papers. This was surely a contention which was inconsistent with the written statement already filed. When, in para 2 of the written statement, it is said that the agreement of sale was not valid document, the reason for the invalidity was that some of the persons in the partnership had retired. There was no contention that signature was taken on blank papers. In yet another portion of the written statement in para 2, the contention was that the agreement was unlawful since the pre-requisite of contract of passing of consideration had not been done. Otherwise also, the invalidity of document on account of non-passing of consideration or by the fact that some of the persons who had joined the document were not competent to execute is not the same thing as pleaded by means of amendment that the signatures were taken on blank papers. This contention was inconsistent with what was originally

taken and cannot be brought by amendment.

6. There is also a contention that there had been a fraud committed and a case had been registered in FIR No.727 of 2006. Details of fraud are always required to be set forth as required under Order 6 Rule 4 CPC and it cannot be left to be assumed. If a party so chooses to file his pleadings and believes that mere reference to lodging of FIR was sufficient without detailing the various acts of fraud, then I will find them as inadequate pleadings and cannot allow the defendant to bolster up his own pleadings by amendment later. This surely amounts to filling up a lacuna which the pleadings woefully lack and there is no escape from it to approach through amendment.

7. As regards the contention that there had been a failed agreement of sale in favour of the plaintiff's wife earlier, if it was relevant it can be a matter that could be elicited in the cross-examination of the plaintiff and if it was not relevant, it was not even necessary that it should be brought through an amendment. In either case, I do not think the non-reference to earlier agreement in the name of plaintiff's wife has any material value which will cause any prejudice to the defendant. The amendment must be seen as something so relevant that if it is not allowed to be taken, gross prejudice will be caused. I will find no prejudice as having brought upon by lack of specific plea regarding an agreement in favour of the plaintiff's wife. I need only to make reference about judgments of the Supreme Court which are referred before me.

8. In the judgment in Baldev Singh Vs. Manohar Singh 2006

(6) SCC 498, the Supreme Court held that as a general principle of law,

Courts will always be lenient to allow for amendment of written statement than amendment of plaints. Order 6 Rule 17 CPC, however, does not make difference between the amendment of plaint or written statement, for, it refers to amendment of pleadings. Pleadings are defined under Order 6 as including plaint and written statement. The amendment of written statement is more lenient only because it is the privilege of the defendant to make even inconsistent or alternative pleas. It all depends what is the amendment that is sought to be brought. If the amendment will have an extraordinary bearing of a thing which was omitted to be stated, which is crucial and could not be brought at the time when the written statement was filed, then there is scope for bringing such an amendment. In Baldev Singh's case (supra), the Supreme Court was considering the issue of a plea of limitation to be allowed to be raised by means of a written statement. Section 33 of the Limitation Act itself states that even without a pleading the Court can examine the issue of limitation. If the plea is permitted to be taken, it is because the parties surely know that they are heading for at the time of trial and there is no surprise drawn. The amendment brought, therefore, to allow for a plea regarding limitation of suit cannot, therefore, be taken to be anything too significant to be permitted and if the Supreme Court was allowing for the same it was justifiably so and we do not find such a situation obtaining in this case. Even the observation of the Supreme Court in M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd. 2001(8) SCC 97 that if there is a delay, the Court could make sufficient reparation by imposition of costs would be a point which the trial Court itself must see. If the trial Court chooses not to do so and

dismissed the application for amendment where the defendant was trying to bring a plea which was not merely clarificatory but inconsistent with the plea which was originally made, it was rightly rejected.

9. To this extent, I will find no reason for intervention. The order is sustained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

March 17, 2015
Pankaj*