

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 1681 of 2014 (O&M)

Date of decision: 03.07.2015

Bhagwant Singh Th. Sher Singh

... Petitioner

versus

Harjinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kulbhushan Raheja, Advocate for the petitioner.

Mr. A.P. Kaushal, Advocate for

Mr. Navjot Singh, Advocate for the respondent.

K.Kannan, J.

The revision petition is at the instance of the defendant whose application for amendment of the written statement filed after the conclusion of the plaintiff's evidence and when he obtained his own turn to give evidence, the Court below declined the amendment of the petitioner before this Court. The suit is for specific performance of an agreement to sell and the defence is that the document is a forgery and the plaintiff is trying to use the signature on the blank papers. Learned counsel state that he was now trying to bring an explanation about the circumstances under which the forgery was perpetrated. The legal requirement would be that act of deception or fraud must be specifically pleaded in its details and the defendant ought not to set up such detail in his written statement. The counsel would argue that the Courts shall be liberal in allowing for amendment to written statement than the fetter that may apply with greater vigour for the plaintiff's cause. The counsel would refer to a judgment of Hon'ble Supreme Court in Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale and others, 2007 (4) MPLJ 419, that the amendment which will enable the Court to pinpoint would consider the real dispute between the parties should be allowed. The counsel would refer to Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others, 2007 (2) RCR (Civil) 830, where the Court would held that in cases of amendment of written statement defendant would be entitled to even give a new defence

which is inconsistent and even the admission made in the pleadings could be explained in the amendment. The same point was reiterated by Supreme Court in Baldev Singh and others Vs. Manohar Singh and another, 2006 (6) BCR 710. This Court in Smt. Bhana Vs. Krishan Kumar and others, 2012(s) PLR 717, that if there was a delay on the part of the petitioner in approaching the Court for amendment which could be compensated by cost.

While I grow by my knowledge by previous judgments which the counsel cited, I find no use of their application in any sense. The amendment that was brought to CPC by Act 46 of 1999 sets out a new paradigm for consideration of what an amendment could be brought and casts off any attempt to bring modification in the pleadings after the commencement of the trial. Law also carves out exception for allowing for amendment in respect of matter which a party had not known inspite of due diligence. Beyond this, if we must apply rules of discretion and believe that cost will be panacea for all ills in pleadings, we literally skirt the intendment of the amendment to the CPC for order through the amended Act.

There is nothing in this case which is brought by an amendment which the petitioner did not know already. The liberality of consideration for a defendant to bring an amendment must still to be seen through the prism of what is appropriate procedure. If the defendant cannot explain why the pleadings could not be made earlier of the aspect which he knew, then there is no scope for examining anything further on whether it is an inconsistent plea or whether it is an explanation. They must all be subordinated to the larger requirement set down by the amending provisions.

In my view, very serious prejudice will be caused to the plaintiff if such an amendment were to be brought. The Division Bench of Calcutta High Court has laid down earlier in the year in A.E.G. Carapiet Vs. A.Y. Derderian, AIR 1961 CAL 359, that a party is bound to put in the cross-examination every vital aspect of his case to his adversary at the trial even if it were going to be denied by the other side. It is seen as an essential rule of justice at the trial so that there is no surprise to a party if there arrives by his own turn to explain. This judgment of the Calcutta High Court has been considered by Hon'ble the Supreme Court and approved in M.B. Ramesh Vs.

K. M. Veeraje, 2013 (2) RCR Civil 932, and held that wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is a rule of essential justice. The defendant who carries through the cross-examination of the plaintiff and allows the plaintiff to conclude his evidence cannot bring a plea after the conclusion of the plaintiff side purporting to be an explanation of what the pleadings already are. There must have all been explained already by the appropriate pleadings in the cross-examination of the plaintiff. If that process is concluded without the factual details which the defendant now wants to bring through an amendment, then the amendment which is sought attempts to do by adopting a procedure that is equivalent to putting the cart before the horse.

I must observe that the rules of pleadings under order 6 Rule 4 which would require every aspect of fraud to be pleaded is a recognition of yet another procedure of law namely the law of evidence that places the burden on the defendant to set out and prove the vitiating circumstances. If the plea in defence is forgery such as when the defendant pleads that his signatures was on the blank paper, the burden of proof was only on the plaintiff. The rule of pleadings under Order 6 Rule 4 may not even apply to a defendant in such a case if this plea is forgery. I state this by way of clarification to allay the apprehension of the defendant that the rejection of his plea for an amendment would cause serious prejudice to him. On the other hand if it were to be allowed, the delay will cause serious prejudice to the respondent. The impugned order is maintained and the civil revision is dismissed. Needless to state that any observations made in this order is only for the purpose of the civil revision and will not have any adverse effect in the ultimate disposition that the Court may make at the conclusion of the trial.

The civil revision petition is dismissed with the above observations.

(K.KANNAN)
JUDGE

03.07.2015

