

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

CR No.369 of 2014 (O&M)
Date of decision: January 23, 2015.

Payal Aggarwal

... **Petitioner**

v.

Arun Kumar Goel

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Argued by: Shri Akshay Bhan, Sr. Advocate with
Shri Santosh Sharma, Advocate for the petitioner.
Ms. Promila Nain, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J. (Oral):

A suit for seeking a decree of possession by way of specific performance of agreement to sell dated 8.3.2006 with consequential relief of permanent injunction filed by the plaintiff, petitioner herein, is pending adjudication before the civil court at Kurukshetra since 5.8.2008.

2. When the defendant was leading his evidence, an application was moved under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the written statement to plead that no consideration in fact had passed hands and signatures of the defendant had been obtained by father of the plaintiff who is closely related to the defendant, on the pretext of managing the land and later on the plaintiff in collusion with her father converted the blank papers signed by the defendant, into an agreement to sell. The said application of the defendant even though was strongly contested by the plaintiff, petitioner herein, but the same was allowed vide order dated 23.12.2013 by the lower court which is under challenge in this revision petition.

3. Counsel for the petitioner-plaintiff has urged that the amendment sought for at the fag end of the proceedings of the case not only changes entire nature of the suit and even the same is neither permissible nor is warranted as it would not in any way help the court in adjudicating the matter effectively and competently. Rather, such amendment has changed the entire tenor and temperament of the suit and has brought in issues which are otherwise not arising out of real controversy between the parties.

4. Counsel for the defendant, respondent herein, however has urged that neither nature of the suit is changed nor any prejudice is caused to the petitioner-plaintiff. Thus, validity and legality of the impugned order has been asserted.

5. Very deftly, the defendant has avoided to place on record original written statement as also copy of the application under Order VI Rule 17 CPC for seeking amendment therein. Even copy of reply to the application under Order VI Rule 17 CPC has not been made part of the paper book. But careful reading of the paper book reveals that by amendment in the written statement at the fag end of the trial, the defendant has sought to change the entire texture of the suit wherein not only execution of the agreement to sell has been denied but even the same has been claimed to be the result of fraud and misrepresentation asserting further that the same is even otherwise without any consideration.

6. This plea sought to be introduced subsequently runs completely contrary to the earlier stand of the defendant wherein execution of the agreement to sell was admitted and there was no plea that it was without consideration much less that the same was result of fraud or misrepresentation. Perusal of the impugned order reveals that the lower court completely overlooked the proviso appended to Rule 17 of Order VI

CPC, which, for ready reference, is reproduced as below:-

“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.”

7. It is a conceded fact that the suit was filed on 5.8.2008; written statement was filed on 22.10.2010 and replication was filed on 19.2.2011. Issues were framed on 6.4.2011 and the plaintiff had concluded her evidence on 8.5.2012. When the case was pending for evidence of the defendant and many opportunities had been taken, the application under Order VI Rule 17 CPC was made on 14.3.2013.

8. Observation of the court in the impugned order that the proposed amendment would not change nature of the case and would rather explain the factual position surrounding the document, i.e., agreement to sell dated 2.3.2006, is completely wrong. When the amendment allowed completely changes the tone and tenor of the case of the defendant, wherein even denial of execution of the agreement as also of passing of consideration has now been pleaded, the observation that no prejudice would be caused to the plaintiff, is not correct. Observations of the trial court made in concluding para of the impugned order in their relevant portion are reproduced as below:-

“The proposed amendment would not change the nature of case rather it will explain factual position surrounding the main document dated 8.3.2006 to determine the real justice between parties. This proposed amendment would not cause any prejudice to the pleadings raised by parties. It may not out of place to mention here that defendant can explain each and every fact at the time of filing of written statement at earlier stage but some time inadvertently or due to communication gap between counsel and party, relevant facts remains missing and in this way as and when party came to know then he may seek amendment to facilitate end of justice. Therefore, without

commenting merit or demerit of this case, this court find justification to allow present application subject to heavy costs due to file at belated stage. ...”

9. This observation of the trial court is neither correct on facts nor in law and rather puts the entire matter in controversy entirely in different mould. Not only the entire stand of the defendant by way of amendment which is allowed vide the impugned order has changed the entire texture, but even the tenor and temperament of the suit has also got a sea change.

10. Notwithstanding the fact that amendment of written statement stands on different footing than amendment of the plaint as the law of amendment of written statement is liberal than law of amendment of the plaint, but when clear intention of the parties is to delay and dilate the matter by changing the entire pleadings put forth by the defendant, such amendment cannot be said to be genuine much less material which may be required by the court for complete and effective adjudication of the matter. In Ram Niwas v. Daya Nand and others, 2014(3) Law Herald 2035, this Court in para 9 therein has held as under:-

“9. Thus when the amendment sought for no where advances the cause of justice or would be helpful to the Court for proper adjudication of the matter, it lacks bonafide and legitimacy. The lower Court was right in returning findings that malafide, worthless and dishonest amendments are not to be allowed as these are neither required nor would help in any way for adjudication of the matter in controversy. Consequently these pleas are not required to be incorporated in the written statement.”

11. In Gurmukh Singh v. Gursharan Kaur, 2013(1) PLR 460, this Court clearly held that where the defendant by amendment of the written statement wants to completely overhaul his pleadings by changing large number of facts, such amendment cannot be allowed after commencement of the trial.

12. It is a conceded fact that the trial has already commenced and

the plaintiff has already concluded her evidence whereas the defendant was to lead his evidence but after seeking many opportunities to lead the same, had filed the said application for amendment of the written statement.

13. In Parbhati Lal v. Dalip and another, 2012(4) RCR (Civil) 1007, it was held by this Court that when amendment sought for, seeks to introduce the facts which were already in the knowledge of the party and application is made at a belated stage, when the trial has commenced, such amendment is not to be allowed. To the same effect is Anupma Rubber Pvt. Ltd. v. Bata India Limited, 1999(2) RCR (Civil) 423.

14. Dealing with the matter of amendment of the pleadings, the Hon'ble Supreme Court in Revajeetu Builders & Developers v. Narayanaswamy & Sons, 2010(1) RCR (Civil) 27 (SC), discussing the entire English as well as Indian law with respect to factors to be taken into consideration while dealing with applications for amendment, in para 66 to 70 of this judgment, held as under:-

"FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

15. All these tests given in the above judgment of the Hon'ble Apex Court go against the defendants and thus fail the defendants.

16. Keeping in view the totality of facts and circumstances, the impugned order neither can be sustained on facts nor in law and rather the application moved by the defendant lacks bona-fide and legitimacy and thus was clearly an abuse of process of the court and should have been rejected with exemplary costs.

17. In view of the above discussion, there is merit in the petition. Consequently, while allowing the revision petition and setting aside the impugned order, the application for amendment in the written statement filed by the defendant, is dismissed.

18. Since the matter has already got delayed and the suit is of 2008, the trial court would complete the same within three months, even by taking day-to-day proceedings, if felt necessary.

[Dr. Bharat Bhushan Parsoon]
Judge

January 23, 2015.
kadyan

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