

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 4708 of 2015 (O&M)
Date of Decision: 28.07.2015

Mukesh

.....Petitioner

Vs.

Kaushalya and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harish Nain Advocate, for
Mr. Mohan Singh Rana, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 12.05.2015, whereby application moved by the petitioner under Order 6 Rule 17, of the Code of Civil Procedure, 1908 (for short 'CPC'), was dismissed.

Learned counsel for the petitioner has submitted that while dealing with amendment of written statement, the trial Court was required to take a liberal view. Petitioner could have raised inconsistent pleas by way of amendment. In support of his arguments, learned counsel has placed reliance on the judgment of Hon'ble Apex Court in case **Usha Balashahed Swami and others** vs. **Kiran Appaso Swami and others** 2007 (2) R.C.R. (Civil) 830, wherein it was held as under:-

“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) RCR (Rent) 10: 2000 (1) RCR (Civil) 511: (2000(1) SCC 712 and [Baldev Singh & Ors. v. Manohar Singh](#) (2006 (6) SCC 498)]. Even the decision relied on by the plaintiff in Modi Spinning (supra) 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 (Dead) [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 15A 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's case (supra) as follows :-

"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 statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, 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."

Respondent No. 1 has filed suit for possession and recovery of *mense* profits. Petitioner in his written statement took up a plea that he was owner in possession of the premises in question as he had purchased the same from the plaintiff. When the case was listed for evidence of the defendant, an application was moved by the petitioner-defendant No. 4, under Order 6 Rule 17, CPC, for permission to amend the written statement. The said application was dismissed by the trial Court vide the impugned order. Hence, the present petition by the petitioner-defendant No. 4.

Order 6 Rule 17 of the Civil Procedure Code, 1908 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, parties can be permitted to amend their pleadings but 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 parties could not have raised the matter before the commencement of trial.

In the present case, petitioner had moved the application for permission to amend the written statement after the commencement of the trial. By way of amendment, petitioner wants to take up the plea that he had become owner of the premises in question on the basis of adverse possession. The plea now sought to be raised by the petitioner was available to him at the time of filing of the written statement but the same was not pleaded by the petitioner at the time of filing of the written statement. There is nothing on record to suggest that despite due diligence, petitioner could not raise the plea now sought to be taken by him. In these circumstances, the learned trial Court has rightly dismissed the application moved by the petitioner for permission to amend the written statement.

The judgment relied upon by learned counsel for the petitioner, in the facts and circumstances of the present case, fails to advance the case of the petitioner.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 28, 2015
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