

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

Civil Revision No.5131 of 2013 (O&M)

Date of decision: 24.03.2015

Darshan Singh and another

.....Petitioners

Versus

Bhola Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sherry K. Singla, Advocate for the petitioners.
Mr. Manoj Pundir, Advocate for the respondents.

RAJESH BINDAL, J

This order will dispose of two petitions bearing Civil Revision Nos.5131 and 5136 of 2013.

Challenge in Civil Revision No.5131 of 2013 is to the order dated 9.7.2013 passed by the learned court below whereby in a suit filed by the petitioners (plaintiffs therein) the application filed by the respondents/defendants for additional evidence was allowed.

Challenge in the Civil Revision No.5136 of 2013 is to the order dated 9.7.2013 passed by the learned court below whereby in a suit filed by the respondents (plaintiffs therein) application filed by petitioner No.1 (defendant therein) for amendment of written statement was rejected.

Learned counsel for the petitioners submitted that the younger son of the petitioners having been murdered by Bhola Singh and Jupa Singh on 25.4.2010, FIR No.16 dated 26.4.2010 was registered at Police Station Bilianwali under Section 302/34 IPC. When trial was still pending, the petitioners filed a suit for damages on account of murder of their son specifically alleging that it was caused by respondents/defendants in the suit. The prosecuting agency having recorded wrong statement of the complainant at the time of registration of FIR and not collecting and producing proper evidence before the court, the accused were acquitted by giving benefit of doubt.

Thereafter, the respondents filed a suit for damages on account

of alleged malicious prosecution. In that suit, written statement was filed by petitioner No.1. In the written statement filed in the suit filed by the respondents claiming damages on account of malicious prosecution, the counsel being different than who filed suit for damages on behalf of the petitioners, claiming damages on account of murder of their son, pleaded in the written statement that the son of the petitioners was murdered by Bhola Singh and Nirmal Singh @ Nimma. The counsel had taken the facts from the FIR, whereas, the definite stand of the petitioners in the suit filed by them was that the murder was caused by the respondents. The suit filed by the petitioners was prior in time. When the aforesaid typographical error was noticed, application for amendment was filed, which has been wrongly dismissed by the learned court below. In case the amendment is allowed, no prejudice as such is going to be caused to the respondents. Even the nature of the suit is not going to be changed.

He further submitted that in the suit filed by the petitioners for damages, the respondents filed an application seeking permission to lead additional evidence to produce on record the written statement filed by the petitioners in the suit filed by them for damages for malicious prosecution. In case, amendment in the written statement is allowed, which is in the nature of typographical error, the prayer for leading additional evidence in the form of written statement, which has been permitted to be produced on record, will become irrelevant.

Learned counsel for the respondents submitted that Nirmal Singh @ Nimma was the person, against whom allegation of murder was there, in the criminal case. He was arrayed as one of the accused. That is why the petitioners had mentioned his name in the written statement filed. The application for amendment of the written statement was filed on 15.3.2013 after the respondents filed the application for leading additional evidence in the suit filed by the petitioners for damages seeking to place on record the written statement. He further submitted that the amendment to the written statement is sought by the petitioners after the statements of two witnesses had already been recorded, however, their cross-examination is yet to be conducted.

Heard learned counsel for the parties and perused the paper book.

As far as the prayer for amendment of the written statement is concerned, in my opinion, the same deserves to be allowed. It is the written statement filed by petitioner No.1 in a suit filed by the respondents for damages on account of alleged malicious prosecution, in which, the stand was taken that along with respondents, Nirmal Singh @ Nimma was also one of the accused. In fact, in the suit filed by the petitioners, which was prior in time claiming damages on account of murder of their son, they specifically pleaded that the murder was caused by the respondents. He never pleaded that Nirmal Singh @ Nimma was accused. Addition of his name in the written statement, was explained by stating that the different counsel, filed the suit on behalf of the petitioners and further that the name of Nirmal Singh @ Nimma was introduced by the police in criminal case, from where it was taken by the counsel. Error was certainly inadvertent. Hence, the amendment to the written statement already filed by petitioner No.1 to the suit filed by the respondents deserves to be allowed. The impugned order dated 9.7.2013 passed by the learned court below rejecting the application is set aside. The amended written statement, if not already filed with the application, is permitted to be filed.

As a consequence of acceptance of the aforesaid petition allowing petitioner No.1 to amend the written statement filed by him in the suit filed by the respondents for damages on account of malicious prosecution, Civil Revision No.5131 of 2013, wherein challenge has been made to the order dated 9.7.2013 passed by the learned court below permitting the respondents to produce the written statement (un-amended) filed by petitioner No.1 in the suit filed by them deserves to be accepted as the object of producing that written statement (un-amended) was only to show the discrepancy in the claim made by the petitioners, hence, the order impugned therein dated 9.7.2013 is also set aside.

The petitions are disposed of accordingly.

(RAJESH BINDAL)
JUDGE

24.03.2015/*sharmila*