

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 5996 of 2013 (O&M)
Date of decision: 26.5.2015

Nirmal Singh and others

.. Petitioners

v.

Nirankar Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Munish Gupta, Advocate for the petitioners.
Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the respondent.

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Rajesh Bindal J.

The defendants are before this court impugning the order dated 9.9.2013, passed by the learned court below, vide which the application filed by the petitioners-defendants seeking to amend the written statement, was dismissed.

Learned counsel for the petitioners submitted that the respondent-plaintiff filed a suit for specific performance of agreement to sell dated 7.2.2008. The total sale consideration is ₹ 2,36,00,000/-. Earnest money of ₹ 50,00,000/- was paid. ₹ 2,00,000/- were paid subsequently. It was pleaded that receipt for the aforesaid amount was given on the back side of the agreement to sell and on a separate sheet as well. The last date for execution of the sale deed was 25.5.2008. In the written statement initially filed, the petitioners admitted execution of the agreement to sell and even receipt of ₹ 50,00,000/-. They denied receipt of ₹ 2,00,000/-. The case set up was that the plaintiff was not ready and willing to get the sale deed executed. When in the evidence of the plaintiff, original agreement to sell

was produced on record, there were certain discrepancies found regarding purchase of stamp papers and date of payment of ₹ 50,00,000/-, which was not in terms with what was admitted by the petitioners in the written statement earlier filed, hence the need arose to amend the written statement to explain the admissions already made. The same will not prejudice the case of the respondent. The law is quite liberal in permitting amendment of the written statement, which can be done at any stage of the proceedings. The application was filed, when the case was at the stage of defendants' evidence.

On the other hand, learned counsel for the respondent submitted that entire effort of the petitioners is to wriggle out of the admissions made in the written statement filed. The explanation sought to be given cannot be accepted. Merely because the witnesses produced by the respondent-plaintiff had stated certain facts, the same will not entitle the petitioners-defendants to amend the written statement. If such a plea is to be accepted, there will be no end to the proceedings. He further referred to the order dated 27.4.2009, passed by the learned court below on an application filed by the petitioners for a direction to the respondent-plaintiff to produce the original documents on judicial file. The order clearly suggests that copies of documents were supplied to the counsel for the petitioners-defendants. He being satisfied prayed that the application be disposed of. The written statement was filed thereafter. Once the defendants had filed the written statement after getting copy of the agreement to sell, filing of application seeking to amend the written statement on the plea that the witnesses produced by the plaintiff had stated certain facts differently is clearly an after-thought and is an effort to wriggle out of the admissions made. It is not the case where admissions are sought to be explained, hence, the prayer made by the petitioners was rightly declined by the learned court below.

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

In the suit for specific performance of agreement to sell filed by the respondent-plaintiff, the petitioners initially filed written statement

admitting execution of the agreement to sell. After the entire evidence of the plaintiff was concluded and the petitioners-defendants had already availed of four opportunities to lead their evidence, the application in question was filed seeking to take the plea that agreement to sell, which was admitted to have been executed by the petitioners, was not which had been produced by the plaintiff in the evidence led. The amendments sought in different paragraphs of the written statement are with reference to the evidence led by the plaintiff. The fact is not disputed that before filing the written statement, the petitioners-defendants had filed application before the court below for a direction to the respondent-plaintiff to produce the original documents including the agreement to sell on judicial file. The same was disposed of on 27.4.2009 by passing the following order:

“File taken up today as it was not traceable on 24.4.09. Copies of the documents supplied to opposite counsel. Counsel for defendant has stated at bar that his application for production of documents stands disposed of as satisfied. Accordingly, his application stands disposed of as satisfied. To come up for 1.5.09 for filing written statement and reply to stay application.”

A perusal of the aforesaid order shows that after getting copies of the documents supplied, counsel for the petitioners felt satisfied and got the application disposed of. Meaning thereby, the agreement to sell, execution of which was admitted by the petitioners in the written statement, was with them before filing the written statement. It is not the case of the petitioners that copy of the agreement to sell supplied at that time was different than what was produced in evidence in court. No doubt, the law is liberal in permitting amendment of the written statement, but still each case has to be examined on its own facts. In the case in hand, once the document, namely, the agreement to sell, execution of which was admitted by the petitioners-defendants, was already with them before filing the written statement, they cannot be permitted to take a different plea while seeking amendment in the written statement on account of certain facts stated by the witnesses produced by the respondent-plaintiff. There is no error in the

order passed by the court below.

The petition is, accordingly, dismissed. Consequently, the accompanying application is also dismissed.

(Rajesh Bindal)
Judge

26.5.2015
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