

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

**CR No.1491 of 2015 (O&M)
Decided on: 09.05.2016**

Sanjeev Kakkar and anotherPetitioners
Versus
Bobby KakkarRespondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. R.K. Gautam, Advocate
for the petitioners.

Mr. Hitesh Ghai, Advocate
for the respondent.

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

REKHA MITTAL, J.

The present petition lays challenge to order dated 02.01.2015 passed by the trial Court allowing application for amendment of the written statement.

The petitioners have filed a suit for partition by metes and bounds of property No.B-XXIV-2777/3, measuring 229 sq. yds. Situated in Sunder Nagar, Ludhiana, detailed in headnote of the plaint. The dispute in the present litigation is *inter se* the brothers, sons of Sh. Charanjit Lal Kakkar. The respondent/defendant filed the application for amendment of the written statement in order to raise additional preliminary objections with detailed facts constituting their plea in regard thereto as well as to add certain facts in preliminary objection No.1 raised in the original written statement and the same has been

allowed by the learned trial Court after receipt of reply and having heard counsel for the parties.

On 23.03.2015, notice of motion was issued and a relevant extract therefrom reads as follows:-

“Learned counsel for the petitioners has submitted that the defence of the respondent was struck off vide order dated 03.09.2014 and thereafter, the application was moved by the respondent for permission to amend the written statement. Earlier also, respondent had moved an application for permission to amend the written statement and the same was got withdrawn on 24.09.2014.”

Counsel for the petitioners has assailed the impugned order primarily on three counts. The first submission made by counsel is that as defence of the respondent/defendant was struck off by the learned trial Court vide order dated 03.09.2014, there was no occasion for allowing amendment of the written statement. The second submission is that a similar application was filed for amendment of the written statement on an earlier occasion but the same was dismissed as withdrawn without reserving any right to file a fresh one for the same amendment, therefore, the present application is not sustainable.

Counsel has argued with vehemence that there is not even a whisper in the instant application as to how the facts sought to be pleaded by way of amendment could not be pleaded in the written statement originally filed despite exercise of due diligence, therefore, the application is barred by proviso appended to Rule 17 of Order 6 CPC. In support of his contention, he has relied upon judgments of this Court **“Ajmer Singh vs Girdhala and others”, 2014(3) Civil Court**

Cases 056, “*Vinod Kumar and another vs Chiman Lal and others*”, 2015(2) Civil Court Cases 347.

Counsel for the respondent, on the contrary, has submitted that the petition is liable to be dismissed on the premise that the petitioners are guilty of misstating the facts both in the petition and at the time of issuance of notice of motion. To substantiate his contention, he has urged that defence of the respondent was never struck off and vide order dated 03.09.2014 only an opportunity to cross-examine one of the petitioners examined-in-chief was treated as 'NIL' and the said order by no stretch of imagination can be construed to mean that defence of the respondent was struck off. It has been further argued that the respondent did not press his earlier application for amendment of the written statement in view of the circumstances incorporated in the order dated 24.09.2014, and the application was dismissed as not pressed at that stage of the proceedings only.

So far as the plea with regard to the application being hit by the proviso appended to Rule 17 CPC, it has been urged that Sanjeev Kakkar – petitioner/plaintiff No.1 tendered into evidence his affidavit Ex.PA dated 04.09.2012 on 30.07.2014 and cross-examination of the witness was treated as 'NIL' vide order dated 03.09.2014. Subsequent thereto, on 24.09.2014, the Court re-framed the issues and the order dated 10.12.2013 vide which the issues were initially framed was struck off. On 24.09.2014 itself, counsel for the petitioners made a statement that for the time being, he does not press his application for amendment of written statement and further action shall be taken after his redress *qua* order dated 03.09.2014 and in view thereof, the application under

Order 6 Rule 17 CPC was disposed of being not presses at that stage of the proceedings. On the adjourned date i.e. 07.10.2014, an application was filed by the respondent through his counsel for re-calling order dated 03.09.2014 and for permission to conduct cross-examination of PW1. The said application was disposed of by the trial Court in view of statement made by counsel for the petitioners/plaintiffs vide order dated 27.10.2014 and the same reads as follows:-

“Inderpreet Singh, Adv. Counsel for plaintiff has suffered statement that he has no objection if the application on recalling of the order dated 03.09.2014 is allowed as he want to lead the fresh evidence in the light of reframing of issues. On request, adjourned to 14.11.2014 for Pws. It is made clear to both the parties that only three effective opportunity shall be given to adduce and conclude their evidence as per provisions of CPC and not more than three effective opportunity shall be given at any cost.”

On 14.11.2014, application for amendment of the written statement was filed and the same was allowed vide order impugned in the present proceedings. It is vehemently argued that as counsel for the petitioners made a statement that he wants to lead fresh evidence in the light of re-framing of issues, statement of Sanjeev Kakkar by way of affidavit as examination-in-chief recorded earlier cannot stand in the way of the respondent to seek amendment of the written statement after alleged commencement of the trial or to accept contention of the petitioners that the application for amendment is hit by the proviso appended to Rule 17 CPC. The last submission made by counsel is that amendment of pleadings can be allowed at any stage of the proceedings

including the appellate stage, if the facts sought to be pleaded by way of amendment are necessary for complete and effective adjudication of the matter in controversy and the amendment otherwise does not cause such a prejudice to the other party for which he cannot be compensated with costs. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India "***Rajesh Kumar Aggarwal and others vs K.K. Modi and others***", 2006(2) RCR (Civil) 577, ***B.K.N. Pillai vs P. Pillai***", 2000(1) RCR (Civil) 511, "***Abdul Rehman and another vs Mohd. Ruldu and others***", 2012(4) RCR (Civil) 481. Further reliance has been placed upon judgment of this Court "***Sahib Singh and another vs Kuldeep Kumar and others***", 2010(2) Law Herald 1471.

I have heard counsel for the parties, perused the paperbook and the various judgments relied upon by respective counsels.

Before dealing with submissions made by counsel for the parties in regard to merits of the impugned order, it is appropriate to note that there is no dispute about the settled position in law that a party who is guilty of misstating the facts renders himself ineligible to be heard on merits of the case. In the case at hand, the petitioners are guilty of misstating a vital fact that defence of the respondent was struck off vide order dated 03.09.2014 which was also one of the first and foremost contention raised by counsel for the petitioners at the time of issuance of notice of motion. Counsel for the petitioners is not in a position to explain much less justify the said misstatement of fact and this alone is sufficient to reject the petition.

As a matter of fact, vide order dated 03.09.2014, the

defence of the respondent was not struck off. On the contrary, cross-examination of Sanjeev Kakkar was treated to be 'NIL' and a relevant extract from order dated 03.09.2014 is reproduced hereunder for ready reference:-

“PW-1 Sanjeev Kakkar is present since morning for his cross-examination however ld. counsel for defendant requested an adjournment. However no plausible reason mentioned. I find no justification granting opportunity for cross-examination of PW-1 Sanjeev Kakkar as such cross-examination of PW-1 Sanjeev Kakkar is treated as nil, opportunity given. No other PW is present. Now to come upon 10.09.2014 for remaining Pws.”

The respondent initially filed the application for amendment of the written statement on 10.09.2014 and the reply to the application was filed by the petitioners/plaintiffs on 18.09.2014 and the case was adjourned to 24.09.2014 for arguments on the application. On 24.09.2014, the trial Court re-framed the issues and the issues earlier framed on 10.12.2013 were ordered to be struck off. Counsel for the respondent suffered a statement and the application for amendment was disposed of being not pressed at that stage. A relevant extract from order dated 24.09.2014 passed by the trial Court reads thus”-

“Sh. Sham Lal Ghaim, Advocate, counsel for the defendant suffered a statement that he was not in the knowledge of order dated 3.9.2014 as he appeared in this case on 10.9.2014, for the time being he does not press his application for amendment of written statement and further action shall be taken after his redress qua order dated 3.9.2014. In view of his statement application u/o 6 r-17 CPC being not pressed at this stage. Now to come up on 7.10.2014 for Pws.”

On the adjourned date, counsel for the respondent filed an application for re-calling order dated 03.09.2014 and permission to conduct cross-examination of PW-1. The said application was disposed of by the trial Court vide order dated 27.10.2014, reproduced hereinbefore.

On the next date, the present application for amendment of the written statement was filed. Keeping in view the facts and circumstances discussed hereinbefore, it is difficult to accept contention of the petitioners that the present application for amendment cannot be maintained by the respondent due to dismissal of his earlier application.

There cannot be any dispute about the settled position in law that amendment of the pleadings can be allowed at any stage of the proceedings. The Hon'ble Supreme Court of India in ***“Revajeetu Builders and Developers vs. Narayanaswamy and sons and others”***, 2010(1) RCR (Civil) 27, has culled out certain principles to be taken into consideration while dealing with the application for amendment of pleadings. The relevant extract from para 67 and 68 of the judgment reads as follows:-

“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 6 Rule 17. These are only illustrative and not exhaustive.”*

In ***Abdul Rehman's case (supra)***, the Court has held, in para 8, reads as follows:-

“8. *The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently,*

*allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in **J. Samuel and Others v. Gattu Mahesh and others, 2012(1) Recent Apex Judgments (R.A.J) 226: 2012(1) R.C.R. (Civil) 903: (2012) 2 SCC 300 and Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and others, 2012(2) Recent Apex Judgments (R.A.J.) 318: 2012(2) R.C.R. (Civil) 739: (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”***

This judgment was rendered by the Court after taking into consideration the proviso appended to Rule 17 which was added by way of amendment in the year 2002. As in the present case, any proceedings conducted by the trial Court prior to 24.09.2014 with regard to framing of issues or examination of Sanjeev Kakkar as a witness would be of no consequence in view of the later developments and the first application for amendment of the written statement was filed by the respondent even before re-framing of issues, though, the same was later dismissed as not pressed at that stage vide order dated 24.09.2014, it is difficult to accept contention of the petitioners that the application for amendment of the written statement is hit by the proviso

appended to Rule 17 CPC. This apart, counsel for the petitioners is not in a position to say as to what prejudice is caused to the petitioners by way of the proposed amendment which cannot be redressed on payment of costs as has been allowed by the learned trial Court. Taking a cumulative view of the given facts and circumstances, the petitioners cannot derive any advantage to their contentions from the judgments relied upon during the course of arguments. On the contrary, the application for amendment of the written statement which stands on a better footing than that of amendment of a plaint is not hit by the principles laid down in *Revajeetu Builders and Developer's case (supra)* and *Abdul Rehman's case (supra)*.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed. No order as to costs.

09.05.2016
yakub

(REKHA MITTAL)
JUDGE