

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

**Civil Revision No.2774 of 2014 (O&M)
Date of decision: 08.01.2016**

Alep Parkash Singh and others

.....Petitioners

Versus

Atamjit Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kamal Sehgal, Advocate,
for the petitioners.

Mr. K.S. Khehar, Advocate,
for respondent No.1.

Ritu Bahri, J.

Challenge in this petition is to the order dated 25.02.2014 (Annexure P-3) passed by the Civil Judge (Junior Division), Jalandhar, whereby application filed by the petitioners under Order 6 Rule 17 read with Section 151 CPC for amendment of written statement, has been dismissed.

Atamjit Singh-plaintiff (respondent No.1) filed a suit for declaration that he was owner in possession of suit properties situated in village Dakoha, District Jalandhar and village Aur, District Nawanshahr. He also challenged the judgment and decree dated 12.06.2006 passed by the Civil Judge (Senior Division), Jalandhar in civil suit No.422 of 2000, in favour of Smt. Raminder Kaur, mother of the petitioners. Originally, Sh. Gurbaksh Singh was owner in possession of both the aforesaid properties.

He sold the suit land situated at village Aur to Lt. Col. Gurbachan Singh

vide sale deed dated 14.06.1958. Thereafter, he sold the land situated at

village Dakoha to Mrs. Surjit Kaur wife of Gurbachan Singh vide sale deed dated 19.06.1958. Plaintiff himself was attesting witness of sale deed 19.06.1958 on behalf of Mrs. Surjit Kaur wife of Gurbachan Singh. Said Gurbachan Singh died on 16.06.1980 and after his death, mutation of land situated at village Aur was also sanctioned in favour of his widow, Surjit Kaur and she became owner of both the properties situated at village Dakoha and Aur. Surjit Kaur was issueless and was living with her sister, Raminder Kaur. During her lifetime, Surjit Kaur had executed a registered Will dated 03.03.1996 in favour of her sister Raminder Kaur with regard to both the aforesaid properties. Consequently, she died on 10.04.1996. Thereafter, Raminder Kaur (mother of present petitioners) became owner in possession of suit properties on the basis of Will dated 03.03.1996.

Previously, plaintiff-respondent No.1 had filed a suit on 09.04.1979 titled as 'Atamjit Singh Vs. Surjit Kaur and others' for declaration that he was owner of land measuring 98 Kanals 12 Marlas, situated at village Dakoha, District Jalandhar and that the sale deed dated 19.06.1958 qua the suit land in favour of Surjit Kaur was not binding on his rights. However, the said suit was dismissed on 10.09.1981. Appeal against the said judgment was dismissed by the lower appellate Court on 17.01.1984. RSA No.1179 of 1984 preferred by respondent No.1 before this Court, was also dismissed vide judgment dated 18.02.2010 and the same has attained finality.

Present application (Annexure P-1) for amendment of the written statement was filed by legal heirs of defendant No.1 i.e. Raminder Kaur on 22.01.2014 by taking a plea that in the earlier written statement, the fact with regard to dismissal of previous suit dated 09.04.1979 had not been

mentioned, which was dismissed upto this Court vide judgment dated

18.02.2010. The matter with regard to the suit land situated at village Dakoha had already been adjudicated upon and attained finality. Therefore, the present suit was barred under Order 2 Rule 2 CPC on the doctrine of *constructive res judicata*. This fact was concealed by the plaintiff (respondent No.1) while filing the present suit. The legal heirs of defendant No.1-petitioners sought amendment of the written statement by incorporating the fact with regard to previous litigation, which had attained finality and this would not create a new or inconsistent fact. Reply to the application was filed by respondent No.1, copy thereof has been annexed as Annexure P-2.

Trial Court, vide order dated 25.02.2014 (Annexure P-3) dismissed the said application on the ground of delay and laches as there was no explanation for inordinate delay in seeking amendment of the written statement. It was further observed that the proposed amendment would amount to *de novo* trial. Hence, this petition.

Learned counsel for the petitioners has argued that even though the written statement in the present case was filed on 28.08.2007 and the present application was made in the month of January, 2014 after a gap of four years when the trial had commenced, but keeping in view the real dispute between the parties, the amendment should have been allowed. The real object of Order 6 Rule 17 CPC is that the Court should try the merits of a case and the real controversy between the parties, provided that it does not cause prejudice or injustice to the opposite party. He has referred to the decisions given by the Hon'ble Supreme Court in **Andhra Bank Vs. ABN Amro Bank N.V. And others**, AIR 2007 Supreme Court 2511 and **Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others**, AIR 2006 Supreme

Chandra Narain Tripathi Vs. Kapil Muni Karwariya, 2011 (4) Civil Court Cases 767 (Allahabad), wherein it has been held that mere delay could not be a ground for dismissing an application for amendment of written statement, if such amendment is necessary for proper adjudication of the case.

Learned counsel for respondent No.1, on the other hand, has argued that the amendment cannot be allowed after a gap of four years to fill up the lacuna and only to prolong the proceedings. He has referred to the judgment passed by a Co-ordinate Bench of this Court in Vinod Kumar & another Vs. Chiman Lal & others, 2015 (2) Civil Court Cases 347 (P&H).

After filing of the suit, defendant No.1-Raminder Kaur expired on 19.07.2010 and present petitioners were impleaded as her LRs vide order dated 07.01.2011. They filed an application under Order 7 Rule 11 CPC for rejection of the plaint, which was dismissed vide order dated 10.12.2011 and civil revision i.e. CR No.2103 of 2012 filed against the said order was admitted by this Court on 27.11.2013. Thereafter, they filed an application (Annexure P-1) for amendment of written statement on 02.01.2014. There is no doubt that on earlier occasion, the filed by the plaintiff was dismissed and the said order had attained finality by dismissal of RSA No.1179 of 1984 vide order dated 18.02.2010. The fact with regard to above said litigation could not be mentioned in the written statement, which was filed on 28.08.2007 by Raminder Kaur. For all intents and purposes, after the death of Raminder Kaur on 19.07.2010, her legal heirs-petitioners made the present application for amendment of the written statement, after being impleaded on 07.01.2011. The written statement could not be amended till the dismissal of RSA No.1179 of 1984 on 18.02.2010 and the legal heirs of Raminder Kaur were unable to do so during her lifetime. Hence, after stepping into her shoes, the petitioners made an application under Order 7

Rule 11 CPC for rejection of plaint, which was dismissed on 10.12.2011. Thereafter, the present application (Annexure P-1) for amendment of written statement was filed. The plaintiff-respondent No.1 was all along aware about the suit, which had been filed on 09.04.1979 with regard to land measuring 98 Kanals 12 Marlas, situated at village Dakoha. He had omitted to state this fact in the plaint. The present petitioners could file application for amendment after they were impleaded as legal heirs of Raminder Kaur and not before that. Since RSA No.1179 of 1984 was dismissed on 18.02.2010, this fact could not be mentioned in the written statement, which was filed in the year 2007. Moreover, this would amount to making of correction of the facts in the written statement, which were not in dispute.

Now we can proceed to examine the provisions of Order 6 Rule 17 CPC, which is reproduced as under:-

“17. Amendment of Pleadings.- the Court may at any stage at 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.”

First part of Order 6 Rule 17 provides that the Court, at any stage, can allow either party to amend its pleadings, which may be necessary for the purpose of determining the real question in controversy between the parties. However, proviso to above Rule requires that the Court should come to a conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. Hence, the object of proviso to

pleadings after commencement of trial and a finding has to be recorded by the Court that in spite of due diligent, the said amendment could not be sought earlier. The amendment of plaint and amendment of written statement are governed by the same principle. However, the Court can take a more liberal approach in allowing amendment in the written statement than that of the plaint. The Hon'ble Supreme Court in **Rajesh Kumar Aggarwal's** case (supra) has observed that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. In this judgment the Hon'ble Supreme Court has further observed as under:-

“16. 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 maybe necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI, Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

The Hon'ble Supreme Court in **Andhra Bank's** case (supra), while considering the object of Order 6 Rule 17 CPC, has observed that the only question for deciding an application for amendment would be, whether such amendment was necessary for deciding the real controversy between the parties to suit or not. Delay would not be a ground to refuse the prayer of amendment. The Court is not required to give its opinion on merits on the amendment sought to be made in the written statement. In the case before the Hon'ble Supreme Court, an additional ground of defence was sought to be taken by amendment of written statement to the effect that under Section

of written statement was allowed keeping in view that it was permissible in law to amend a written statement of the defendant by which only an additional ground of defence had been taken.

In the facts of the present case, after the death of Raminder Kaur in 2010, her LRs-petitioners were impleaded on 07.01.2011. Thereafter, they made an application (Annexure P-1) for amendment of written statement. An earlier suit filed by plaintiff-respondent No.1 qua the same land situated at village Dakoha had been dismissed up to this Court vide judgment dated 18.02.2010. This fact could not be incorporated in the earlier written statement, which was filed by Raminder Kaur in the year 2007. Hence, after the death of Raminder Kaur, her LRs-petitioners who stepped into her shoes, had filed an application (Annexure P-1) for amendment of the written statement. Decision of earlier suit, filed by the plaintiff which had attained finality on 18.02.2010, would have a direct impact upon the present suit. Moreover, decision of the earlier suit was very much in the knowledge of plaintiff-respondent No.1 when he filed the present suit, but had omitted to state the same in his plaint. However, if amendment of the written statement is allowed, it would merely facilitate the trial Court to decide the main issue between the parties. Object of Order 6 Rule 17 CPC would be achieved, if the said amendment is allowed. Petitioners, who are legal heirs of deceased-Raminder Kaur, despite due diligence, could not have stated this fact in earlier written statement, which was filed in the year 2007, as they were impleaded in the year 2010. Hence, in view of the aforesaid judgments of Hon'ble Supreme Court, they can be allowed to amend the written statement by taking a liberal approach.

In view of above, the impugned order dated 25.02.2014 (Annexure P-3) is set aside and the petitioners are allowed to amend their written statement as prayed for, subject to payment of costs of Rs.5000/-.

Allowed accordingly.

08.01.2016
ajp

(RITU BAHRI)
JUDGE