

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

CR No. 537 of 2016

Date of decision : 01.02.2016

Siya Ram

.....Petitioner

Versus

Smt. Manjeet Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Anuj Balian, Advocate
for the petitioner.

DARSHAN SINGH,J

The present revision petition has been preferred against the order dated 16.12.2015 passed by the learned Civil Judge (Sr. Division), Ambala, vide which the application filed by respondent-defendant no.1 for amendment of the written statement under Order 6 Rule 17 Code of Civil Procedure (for short 'CPC') has been allowed.

2. Learned counsel for the petitioner-plaintiff contended that by way of amendment of the written statement, the respondent-defendant no.1 sought to add the factual plea which was already known to the defendants.

Thus, he contended that after the commencement of the trial, the application for amendment of the pleadings cannot be entertained. To support his contentions he has relied upon case **Vidyabai & Ors. Vs. Padmalatha & Anr. 2009(1) R.C.R (Civil) 763.**

3. He further contended that rights of the petitioner-plaintiff has also been prejudiced because no opportunity has been granted to the petitioner to file the replication to the amended written statement to controvert the pleas raised in the amended written statement.

4. I have duly considered the aforesaid contentions.

5. The plaintiff-petitioner has challenged the sale deed dated 22.11.2010 executed by defendant no.2 in favour of defendant no.1. By way of amendment in the written statement, respondent-defendants wants to add the plea that defendant no.2 after giving the bid in the auction held in the year 2001 was not in a position to deposit the instalments of the sale consideration and he approached the husband and father-in-law of defendant no.1 to deposit the instalments of the sale consideration and when the mandatory period of 10 years would be complete, defendant no.1 would transfer the suit land to defendant no.1 or the person of his choice. The physical possession of the suit land was also handed over to the husband of the defendant

no.1. No doubt, the aforesaid plea is the factual plea. But, it is the settled principle of law that the liberal approach should be adopted in case of amendment of the written statement. The additional plea in the written statement by way of amendment should generally be allowed.

6. The provisions of Order 6 Rule 17 CPC is the procedural law. No doubt, the proviso to order 6 Rule 17 CPC provides 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 the trial'. The aforesaid proviso is the provision of the procedural law. The Hon'ble Supreme Court in case **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Ors. 2005(4) R.C.R (Civil) 823** has laid down that all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not be construed in a manner which would leave the Court helpless to meet extraordinary situations in ends of justice, processor law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It was further laid down that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. The similar

ratio of law has been laid down by the Hon'ble Apex Court in case **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others 2015(5) R.C.R (Civil) 562**. Thus, the proviso to Order 6 Rule 17 CPC cannot be construed in the manner that amendment of pleadings cannot be allowed in any case after the commencement of the trial.

7. The Hon'ble Supreme Court in case **Sushil Kumar Jain Vs. Manoj Kumar & Anr. 2009 (3) R.C.R (Civil) 899** has authoritatively laid down that in the case of an amendment of the written statement, the Courts should be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the law regarding amendment of the written statement is quite liberal. Even, a new or inconsistent ground of defence can be allowed by way of amendment in order to do the complete justice between the parties.

8. In the instant case also the defendant-respondent no.1 had sought to introduce the additional plea for the better and effective decision of the matter in controversy. There is no material to show that the respondent-defendant

no.1 had acted malafidely by seeking the aforesaid amendment. The purposed amendment will not change the nature of the case and will not cause any prejudice to the rights of the plaintiff-petitioner.

9. The plea raised by learned counsel for the petitioner that the petitioner will have no opportunity to rebut the plea raised in the amended written statement can well be taken care of with the observations that if any such request is made before the learned trial Court, the learned trial Court will consider the same in accordance with law.

10. Thus, I do not find any illegality in the impugned order calling for the interference by this Court while exercising the supervisory powers under Article 227 of the Constitution of India.

11. Resultantly, the present revision petitions having, no merits, are hereby dismissed.

February 01, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**