

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6114 of 2015

Date of Decision: 26.2.2016

Mohan Lal

---Petitioner

versus

Hari Ram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.R.Yadav, Advocate
for the petitioner

Mr. Subhan Kaushik, Advocate
for the respondent

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

Rekha Mittal, J.

The present petition directs challenge to order dated 12.8.2015 (Annexure P-5) passed by the Civil Judge (Junior Division), Mohindergarh dismissing application of the petitioner for amendment of the written statement.

Counsel for the petitioner contends that the respondent has filed a suit for permanent injunction restraining the petitioner from interfering in possession of residential property, detailed in the head note of the plaint. Further prayer has been made to restrain the petitioner from raising construction or alienating 1/4th share of the petitioner, on the basis of

a written family settlement dated 27.8.1996 and in lieu whereof, plaintiff had allegedly paid Rs. 20,000/- to the defendant.

The petitioner/defendant filed the written statement and denied any such family settlement or receipt of an amount of Rs. 20,000/- in lieu of his share. Later, the petitioner filed the instant application seeking amendment of the written statement to add para No. 2-A by way of an explanation of his stand already taken in the written statement. It is argued that application for amendment of the written statement was filed even before the trial stood commenced. No prejudice would be caused to the respondent/plaintiff in case the proposed amendment is allowed when otherwise the law is quite liberal in allowing amendment of the pleadings particularly in regard to amendment of the written statement. The last submission made by counsel is that the learned trial court has dismissed the application by misconception that by way of proposed amendment, the petitioner sought to withdraw from an admission earlier made in the original written statement when the fact is not so.

Counsel for the respondent has supported the impugned order with the submissions that once the petitioner has emphatically denied his having entered into the alleged family settlement or receipt of Rs. 20,000/- in lieu of his share to the extent of 1/4th in the suit property, the application for amendment by way of addition of para No. 2-A is a mischievous attempt to wriggle out of the family settlement, knowing fully well that the said settlement, was signed by the petitioner in token of its due execution and correctness.

I have heard counsel for the parties and perused the records.

Before dilating on rival submissions made by counsel for the parties, it is appropriate to recapitulate the judgment of the Hon'ble Supreme Court of India **Revajeetu Builders and Developers vs. Narayanaswamy and sons and others 2010(1) RCR(Civil) 27** wherein Hon'ble the Apex Court has laid down certain guiding principles for dealing with the application for amendment of pleadings. A relevant extract from para 67 reads as follows:-

- (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.”

There cannot be any dispute about the settled position in law that amendment of the pleadings can be allowed at any stage and amendment of a written statement stands on a better footing than that of a plaint. The learned trial court dismissed the application with the observations that the petitioner wanted to change his admission and he cannot be given liberty to blow hot and cold together. Perusal of the

averments made in the application, reply thereto, written statement initially filed and facts sought to be incorporated by way of amendment would run contrary to what has been held by the learned trial court. The petitioner neither admitted the family settlement dated 27.8.1996 in the written statement originally filed nor he seeks to admit the said document by pleading additional facts. It is the consistent stand of the petitioner that the family settlement dated 27.8.1996 was not executed by him. By way of additional facts, the petitioner has sought to explain that the family settlement dated 27.8.1996 has been prepared fraudulently by taking benefit of helplessness of the applicant-defendant.

When the facts and circumstances of the present case are examined in the light of guidelines laid down by Hon'ble the Apex Court in **Revajeetu Builders and Developers' case (supra)**, the order passed by the trial court cannot be allowed to sustain and the same is accordingly set aside. As a result, the application filed by the petitioner for amendment of the written statement is allowed.

For the foregoing reasons, the petition is allowed, the impugned order is set aside but without expressing any opinion on merits of the case.

(Rekha Mittal)
Judge

26.2.2016

PARAMJIT