

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

CR No. 69 of 2014 (O&M)

Date of decision: 05.01.2016

Yash Pal and another

... Petitioners

versus

Sat Guru Rice Mills, Kaithal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashokdeep Singla, Advocate for the petitioners.

Mr. Rakesh Gupta, Advocate for the respondents.

K.Kannan, J. (ORAL)

The defendant brought an amendment to the plea referring to the fact of sale dated 13.09.2005 that there was a settlement between the parties that the consideration shall be more than what was stated in the sale deed and the amounts which had been paid in excess is now sought to be used by the plaintiff to fabricate the case of oral agreement for some other property. This application for amendment was after a preliminary round of objections taken by the defendant to give some evidence which was stated to be against the pleadings and when this Court intervened in an earlier civil revision petition to allow for the liberty to the defendant to bring an amendment to the written statement after hearing the objection from the plaintiff, the defendant moved such an application and on objections given by the plaintiff, it was declined.

The present contention that there was actually a settlement for payment of higher consideration but the sale deed which was executed on 13.09.2005 merely recited a lesser amount than what was actually paid. This fact has been actually confronted at the time of the cross-examination of the plaintiff but denied by the plaintiff. There was a denial in the written statement already that there was any oral

agreement to sale in the manner canvassed by the plaintiff and after failing to elicit from the plaintiff a favourable answer that there had been an oral settlement between the parties for payment of larger consideration, the defendant has moved this application for amendment.

It is most desirable in all cases that the parties make a full disclosure of all relevant facts and no amendment shall be brought after the commencement of the trial except under situations where a party, by exercise of due diligence, did not know a particular fact which was required to be stated later. This is the mandate under Order 6 Rule 17 amended Act 26 of 2002 CPC but there could be an exceptional situations where a party believes a particular statement to be a matter of evidence and keeps it for cross-examination of the witness to bring a surprise. If the relevant fact is not wholly inconsistent but quiet possible under the circumstances, such a party ought not to be precluded from bringing an amendment to secure all the necessary facts in the case for consideration by Court. The additional statement surely accords with the defence already put up and there is nothing inconsistent that should cause any serious prejudice at the trial. On the other hand, the plaintiff has been cross-examined with reference to earlier statement between the parties which has been denied and the plaintiff could surely, therefore, anticipate what the defendants were attempting to convey through the written statement already filed which was now sought to be exemplified by appropriate pleadings. An objection that the so-called document was not actually confronted to the plaintiff has also been explained by the defendant by stating that it is in the custody of some other party who is a co-defendant, who supports the plaintiff's cause. For the sheer indiscretion in the defendant's conduct in bringing such an amendment at the belated time that has caused an obstruction in the course of trial, I impose costs of Rs. 15,000/- to be paid by the defendant in favour of the plaintiff

within a period of 4 weeks from the date of the receipt of the copy of the order.

The order passed already is set aside and the defendant shall be permitted to bring an amendment to the pleadings.

The plaintiff shall have the liberty of filing a reply/rejoinder to the defendant's amended written statement only to the extent of traversing the allegations brought through the amended written statement. Needless to state that the plaintiff will also have a right of rebuttal for the amended pleadings which are brought by means of the amended written statement after the conclusion of the defendant's evidence.

The revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

05.01.2016

kv