

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

**CR No.7297 of 2015 (O&M)
Date of decision:20.10.2016**

Roop Ram Educate Private Limited ... Petitioner

Vs.

Exclusive Floor Owners Society ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Aggarwal, Senior Advocate with
 Mr. Alok Jain, Advocate
 for the petitioner.

 Mr. Shailendra Jain, Senior Advocate with
 Ms. Mannu Chaudhary, Advocate
 for the respondent.

AMIT RAWAL J.

The petitioner-plaintiff is aggrieved of the impugned order dated 08.10.2015 (Annexure P-1), whereby, the application filed under Order 6 Rule 17 of Code of Civil Procedure (hereinafter referred to as “CPC”) at the instance of the respondent-defendant seeking amendment of the written statement for incorporating preliminary objection no.5, has been allowed.

Mr. Ashok Aggarwal, learned Senior Advocate assisted by Mr.Alok Jain, Advocate appearing on behalf of the petitioner-plaintiff submits that the order under challenge is most erroneous and perverse, much less, fallacious as the application seeking amendment of the written statement does not suffice the compliance of amended provisions of the statute, in essence, there is no reference to the expression “despite exercise

of due diligence”.

He further submits that the trial Court did not understand the concept of initiation/beginning of the trial, in essence, the application was moved on 21.08.2013, whereas, the issues were framed on 05.04.2011 and almost three witnesses have tendered their statements. Prior to passing of the aforementioned order, the trial Court allowed the similar application, vide order dated 12.08.2014 (Annexure P-7) by giving the almost identical reasoning as has been given in the impugned order by mistaking the concept of beginning of the trial and the said order was assailed in this Court, vide CR No.6291 of 2014 which was set aside, vide order dated 16.01.2015 with a direction to the trial Court to decide the application for amendment afresh in accordance with law, i.e., impugned is basically a replica of the previous order by assigning little more details but the Court below did not rely upon the judgment without any reasons and the reasons assigned is that it do not apply to the facts and circumstances of the case, thus, the impugned order suffers from lack of application of mind, much less, cogent reasons and, therefore, the same is liable to be set aside.

Per contra, Mr. Shailendra Jain, learned Senior Advocate assisted by Ms. Mannu Chaudhary, Advocate appearing on behalf of the respondent-defendant submits that as per the zimni orders (Annexure P-9), the witnesses of the plaintiff have only filed their affidavits and they are yet to be examined. The amendment sought is elucidated in nature and did not alter the stand, much less, tantamounts to withdrawing of the admission, in essence, it is explanatory in nature. The amendment is essential and necessary for adjudication of the *lis* as the plaintiff would be able to cross-

examine the witnesses of the defendant led in support of such averments. He further submits that the parameters for entertaining the application for amendment of the plaint and written statement are totally different as the law of amendment of written statement is more liberal than of the plaint.

In rebuttal, Mr. Aggarwal has referred to the averments made in paragraph 8 of the original plaint and reply thereto in the written statement to demonstrate that the reply is running into almost number of paragraphs which is sufficient for adjudication of the lis, thus, incorporation of the amendment is nothing but delaying tactics which has nothing to do with adjudication of the lis in the absence of any counter claim etc. and urges this Court for setting aside the order under challenge while allowing the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Aggarwal, as the zimni orders indicate that three PWs have submitted their affidavits and yet to be cross-examined. The amendment sought to be incorporated reads as under:-

“Add the following P.O No.5 to the written statements

“5. That the plaintiff has not come to the Hon'ble Court with clean hands. The plaintiff has made blatantly false allegations in the plaint. That the correct facts pertaining to the matter in issues are being detailed herein under:-

(i) That the very basis of the suit so filed by the plaintiff that requirement of the roads is requisite for free movement of the school, staff, school vehicles, vehicles of the

parents of the students, is absolutely baseless. That the plaintiff is bound by the guidelines established by the competent authority in reference to usage of the roads and the area inside the school complex. That at per the said guidelines and also as per the plans sanctions for the school the plaintiff is bound to drop the 18 meters wide road. The direct implication of what has been stated above is that the vehicles of the school as well as the parents have to be parked inside the school complex before the students are disembarked from the vehicles. That the layout plan of the school would reveal that a specific area inside the school has been provided for the aforesaid purposes. The said area has been shown in the layout plans of the school in a U-Shaped road. As apparent from the plan itself the U-Shaped road is connected to the 18 meters wide road and can be accessed from the gates of the school. That for using the said area for dropping the students the plaintiff has absolutely no right to use the 10 meter wide road situated towards south of the school or to enter into the said colony. That the entry into the said colony for the purpose of dropping the students would be in direct contravention of the guidelines laid down by the competent authority. That all the vehicles be that of the school or of the parents of the students can easily enter into the school, use the U-shaped road and exit from the gates of the school towards the 18 meters wide road and then again moved towards the main road situated towards north of the school. In

the entire aforesaid process there is absolutely no necessity for the said vehicles to enter into the colony or to go beyond the points A & B. Thus the very basis of the suit is untenable.

(ii) That the 10 meters wide road situated towards south of the school is an internal road to be used only by the residents of the colony. That while acquiring the title of their respective plots/floors, the constituents of the applicant had paid separate charges for the common areas and facilities of the colony. The said common area include the internal roads including the said 10 meter wide road. Thus apparently the said 10 meter wide road is an internal circulation road of the colony. Neither the public at large nor the plaintiff has any right to use the same.

(iii) That the plaintiff derives its entitlement of the school on the basis of a lease deed dated 02.06.2005 executed by M/s DLF. The terms and conditions of the said lease deed bar the plaintiff from using the internal roads of the colony. That the terms and conditions of the lease deed are referable in this regard. Thus the plaintiff has absolutely no locus standi to claim usage of the roads in question since the contract of lease specifically bars their usage.

(iv) That the road situated towards west of the school is a 32.5 meter wide revenue rasta which has absolutely no connectivity with the colony. That a wall and a green belt separates the colony and the said revenue rasta which have been in existence since more than last 12 years and were

established by M/s DLF Ltd.

That the school has a gate opening on the 12.5.meter wide rasta, however, in violation of the sanctioned plans the plaintiff has installed a gate much wider than what has been allowed by the sanctioned plan. Thus, the relief claimed in the present suit with regard to usage of roads on the three sides is legally not made out and the suit deserves to be dismissed.

(v) That the plaintiff is guilty of innumerable violations of the sanctions, permissions and the sanctioned plans while establishing the school in question thus a wrong doer and violator is not entitled to the discretionary relief of injunction.”

In my view, the amendment sought to be incorporated is most innocuous and does not tantamount to altering the nature and stand, much less, withdrawing of the admission. The petitioner-plaintiff would be at liberty to cross-examine the witnesses of the defendant to be examined in support of the defence taken in the amended written statement. As per the zimni order dated 11.01.2013, all the three witnesses had recorded their statements and were present but the cross examination was deferred for the adjourned date and PW2 was bound down for the date fixed. On the two adjourned dates, no PW was present and thereafter, the Court was called upon to adjudicate the application seeking police aid. Thereafter again, witnesses of the plaintiff were not present and on the adjourned date, i.e., 21.08.2013 the application seeking amendment of the written statement in hand was moved. The finding of the trial Court with regard to interpretation of the amended provisions of Order 6 Rule 17 CPC, particularly the stage, is

not correct appreciation, for, the trial is always said to be begun when the issues are framed and the parties lead evidence but not at the stage when it is listed for arguments. However, I am in agreement with the submission of Mr. Jain, for, the parameters for amendment of the written statement as has been held in various judgments are totally different than of the plaint.

The amendment sought to be incorporated is explanatory and elucidated in nature. It does not incorporate the event which was not in existence, i.e, recurring one and therefore, the expression “despite exercise of due diligence” cannot be pressed into service in strict sense.

For the reasons aforementioned, I am of the view that amendment sought to be incorporated is essential and necessary for adjudication of the lis. No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

October 20, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No