

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

Civil Revision No.8072 of 2014

Date of Decision: 27.08.2016

Rekha and others

.....Petitioners

Vs

Surjit Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ayush Gupta, Advocate
for the petitioners.

Mr. Ashutosh Kaushik, Advocate
for the respondents.

RAJ MOHAN SINGH, J

[1]. Order dated 10.11.2014 passed by Civil Judge (Jr. Divn.), Kurukshetra is under challenge at the instance of the petitioners wherein prayer for amendment of written statement was declined.

[2]. Plaintiff/respondent Nos.1 to 3 filed a suit for specific performance on the basis of agreement to sell dated 20.05.2005 allegedly executed by Ram Singh father of the defendant/petitioners in favour of plaintiff/respondents in respect of 4 *Kanals* of land for consideration. He also received earnest money. Target date was fixed as 01.04.2006. Ram Singh died

on 30.10.2005. Pritam Singh approached Kamla Devi wife of Ram Singh for extension of time which was made from 01.04.2006 to 30.06.2006. Receipt of amount of Rs.28,000/- was already acknowledged by the Kamla Devi. With this background suit for specific performance came to be filed.

[3]. In the written statement defendant/petitioners denied execution of agreement to sell, nor any earnest money was received by them. Agreement to sell was claimed to be forged and fabricated. Defendant/petitioners filed an application for amendment of written statement on the ground that the earlier Advocate could not bring factual position on record. Point of limitation and other necessary pleadings could not be taken in the written statement. Pleading was sought to be added in preliminary objection No.10 to the effect that late Ram Singh never received the amount from Pritam Singh and the agreement to sell was not binding upon them. It was further alleged that defendants never authorised Kamla Devi to execute additional agreement to sell dated 29.03.2006. Mental condition of respondent No.4 was also questioned.

[4]. Plaintiff/respondents contested that application on the ground that written statement was filed on 20.01.2011 and the amendment is intended to delay the proceedings. The

application was dismissed by the Civil Judge (Jr. Divn.) Kurukshetra vide order dated 10.11.2014.

[5]. Learned counsel for the petitioners submitted that the amendment in the written statement is to be liberally construed and its effect has to be seen at the time of trial. The perusal of the record reveals that the written statement was filed on 20.01.2011 and thereafter issues were framed on 31.05.2012. The defendants have already denied the execution of alleged agreement to sell. By way of application for amendment they sought to clarify their position and also to take plea of limitation.

[6]. Learned counsel for the petitioners further contended that, if the plea of denial of alleged agreement to sell is already taken in the written statement, the defendants can elaborate the manner in which fraud was committed by way of amendment. The amendment sought by the defendants is intended to explain the already raised pleadings in the written statement and in no manner it will counter the stand taken earlier in the written statement.

[7]. Learned counsel for the petitioners relied upon **Deepali vs. Pankaj Gupta (2006-3) 144 PLR** and **Jai Singh vs. Man Singh, (2008-3) PLR 523** to contend that amendment prayed in the context of explaining plea already taken in the written

statement in an elaborate manner is to be allowed. Further on the strength of ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, learned counsel submitted that amendment of plaint and amendment of written statement stand on different footings. In case of amendment of written statement, defendants are entitled to take new defence and also to plead inconsistent stand. Even an admission in the pleadings can be explained and inconsistent pleas can be taken by way of amendment, even after a definite stand was taken in the written statement. Trial Court in its discretion can allow amendment in the written statement on consideration of principles of law and material on record.

[8]. On the other hand, learned counsel for the respondents has opposed the prayer of amendment on the ground that the change of Advocate and thereafter filing application for amendment on the ground that earlier Advocate intentionally did not incorporate necessary pleadings in the written statement was no ground to ask for amendment of the written statement with the change of original Advocate.

[9]. Learned counsel for the respondents relied upon decision dated 31.01.2012 rendered by this Court in ***Civil Revision No.3692 of 2011*** titled as ***Ram Chander vs.***

Ramanand & another wherein it was held that amendment of written statement after commencement of trial and after conclusion of evidence of both sides cannot be allowed and the defendant cannot be permitted to say that the amendment is necessary as he could not plead such events/pleadings before commencement of trial inspite of due diligence. It will be a lame excuse to stake amendment of pleadings on the alleged fault of the previous Advocate.

[10]. Having considered the arguments, I am of the view that the parameters for amendment of written statement are somehow differently placed than the one required for amendment of the plaint. In case of amendment of written statement, defendants are entitled to take inconsistent plea, even an admission in pleadings can be explained by way of taking plea in the amended written statement. In nutshell, the Court is empowered at any stage of proceedings to allow amendment in the pleadings, if in the opinion of the Court such amendment may be necessary for determining real controversy between the parties.

[11]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. At the same time, the Court

is not obligated to go into the correctness or falsity of the case of either side in the amendment. The Court should not record any finding on merits of the amendment. The merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

[12]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[13]. Amendment can be allowed even after commencement of trial, if in the opinion of the Court the same could not be brought despite due diligence and the party could not have raised the issue before commencement of the trial. The court should be liberal in granting amendment of written statement unless and until serious prejudice or irreparable loss is caused to the opposite side or the amendment was *mala fide*. Even an

admission in the main pleadings can be explained by way of amendment and even inconsistent pleas can be taken in the application for amendment. In **Usha Balashaheb Swami & Ors'** case (supra) the Hon'ble Apex Court rule in the following manner:-

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would 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, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”

[14]. The stand of the respondents that with the change of Advocate, no such indulgence should be granted on the strength of **Ram Chander vs. Ramanand & another's** case (supra), my opinion does not coincide with the facts of the present case. In the aforesaid case, the amendment was sought at the fag end where both the parties have already led their evidence and the case was at final stage. Moreover, facts involved therein were on different footings. In the instant case, the stand of the defendants in the written statement is of total denial to the execution of alleged agreement to sell.

[15]. In para No.2 of the preliminary objection of the written statement a specific stand was taken by the defendants that Ram Singh since deceased never entered into agreement to sell, nor executed alleged agreement to sell dated 20.05.2005. He did not receive any alleged earnest money from the plaintiffs and agreement to sell was a forged and fabricated document

and was an act of fraud played by the plaintiffs in collusion with alleged witnesses. In preliminary objection No.10, the suit was claimed to be time barred. By way of amendment, the defendants sought that real pleas were not incorporate in the earlier written statement and these facts came to fore when the new Advocate put some enquiries to the defendants. Plea regarding limitation, non-joinder, mis-joinder, plea of fraud and plea of verification, plea of Order 1 Rule 7 CPC were not taken in the previous written statement. The defendants wanted to explain the earlier stand of fraud and limitation with some elaborate pleadings in the written statements. In para No.10 of the written statement though plea of suit being time barred was taken, however defendants wanted to explain the reasons for taking such a stand.

[16]. In my considered opinion, keeping in view the law laid down by the Hon'ble Apex Court in **Usha Balashaheb Swami & Ors.** case (supra) indulgence can be granted to the defendants to amend their written statement. During course of arguments, it was also transpired that only two plaintiffs' witnesses have been examined and one plaintiff's witness has been cross-examined.

[17]. In view of aforesaid, the impugned order dated 10.11.2014 passed by the Civil Judge (Jr. Divn.) Kurukshetra is

hereby set aside and the revision petition is allowed subject to payment of cost of Rs.5,000/- payable to the respondents. The payment of cost shall be the condition precedent for allowing indulgence for amendment of written statement by the trial Court.

August 27, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No