

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.2448 of 2017
Date of decision:21.4.2017**

Mam Chand

...Petitioner

Versus

Shri Ram General Insurance Company Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: MrAshwani Arora, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant revision petition, at the hands of petitioner, who is respondent No.2 before the learned Motor Accident Claims Tribunal, ('the Tribunal' for short), filed under Article 227 of the Constitution of India, is directed against the order dated 6.3.2017 passed by the learned Tribunal, dismissing the application of the petitioner, under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure ('CPC' for short), for amendment of the written statement.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner is respondent No.2 before the learned Tribunal and he filed his written statement, pointing out that offending vehicle was insured, vide a particular cover note, with the respondent-insurance company. Thereafter, insurance company filed its written statement, stating that the cover note referred by the petitioner in his written statement, was a false and fabricated document, because said cover

note was pertaining to a different vehicle. Petitioner did not file any rejoinder to the written statement filed by the insurance company nor any such rejoinder was filed by the claimants in spite of the fact that insurance company has taken a specific plea.

It is also not in dispute that after completion of pleadings of the parties, claimants started leading and concluded their evidence. Thereafter, respondents No.1 and 2 before the learned Tribunal, including the present petitioner started leading their evidence. They closed their evidence. One witness was examined by the insurance company also. It was at this belated stage that the petitioner-owner of the offending vehicle, moved an application under Order 6 Rule 17 CPC seeking amendment in his written statement. Since the petitioner failed to substantiate his plea taken before the learned Tribunal, application for amendment moved by the petitioner was dismissed vide impugned order dated 6.3.2017.

When confronted with the above-said undisputed facts and circumstances of the case, learned counsel for the petitioner could not substantiate any of his submissions nor could give any plausible explanation as to how the application for amendment of the written statement was justified at such a belated stage. In fact, a bare reading of the impugned order passed by the learned Tribunal will make it crystal clear that each and every relevant aspect of the matter was rightly examined, considered and appreciated in the correct perspective, before passing the impugned order and the same deserves to be upheld.

Once the insurance company has taken a specific stand about the cover note bearing No.458472 through which the offending vehicle was allegedly insured, as per the stand taken by the petitioner in his written

statement, it was least expected from the petitioner to rebut the specific pleadings of the insurance company, without any further loss of time and preferably before commencement of the trial. He did not do so for the reasons best known to him. On the other hand, he allowed the claimants to produce and conclude their evidence. Thereafter, petitioner himself produced and concluded his own evidence. Still further, even the insurance company has also examined one of its witnesses. It was too late in the day to move an application for amendment of the written statement, at the hands of the petitioner and the same was rightly dismissed by the learned Tribunal, while passing the impugned order, which deserves to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of Hon'ble the Supreme Court as well as this Court:-

(i) Vidyabai & others Vs. Padmalatha and another, 2009(2)

SCC 409;

(ii) P.A. Jayalakshmi Vs. H. Saradha and others, 2009 (14)

SCC 525;

(iii) Piari Bai Vs. Smt. Jamna Bai, 1998(3) RCR (Civil) 170

(P&H);

(iv) Ashok Kumar Laroia Vs. Vijay Kumar and another, 2011

(5) RCR (Civil) 268 (P&H)

The law laid down by the Hon'ble Supreme Court in para 10 of its judgment in ***P.A. Jayalakshmi's*** case (supra), which can be gainfully followed in the present case, read as under:-

“Ordinarily at such a belated stage, leave for filing additional written statement is usually not granted. We may

notice that one of the plaintiffs was examined on 1.3.2007. It is accepted at the bar that despite the fact that the appellant is said to have discovered the existence of the Will on or about 5.2.2007, no question was put to the said witness with regard to the said Will or otherwise. It is only at a later stage that the aforementioned application for grant of leave to file additional written statement was moved. There cannot be any doubt or dispute that the courts should be liberal in allowing applications for leave to amend pleadings but it is also well settled that the courts must bear in mind the statutory limitations brought about by reason of the Civil Procedure Code (Amendment) Acts; the proviso appended to Order 6 Rule 17 being one of them.

*In **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs.** [(2008) 8 SCC 511], the law has been laid down by this Court in the following terms:*

*"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 Civil Procedure Code (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 Civil Procedure Code postulates amendment of pleadings at any stage of the proceedings. In **Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil (Sic)** which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see **Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar**)."*

*Yet again, in **Bollepanda P. Poonacha & Anr. v. K.M. Madapa [(2008) 13 SCC 179]**, the law is laid down in the following terms :*

*"15. A belated counterclaim must be discouraged by this Court. See **Ramesh Chand Ardawatiya v. Anil Panjwani**. We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings is not available as a matter of right under all circumstances. One cause of action cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See **State of A.P. v. Pioneer Builders (sic) and Steel Authority of India Ltd. v. Union of India (sic) and Himmat Singh v. ICI India Ltd.**"*

(Emphasis supplied)

*Yet again, in **Vidyabai & Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409] : [2009(1) ICC (S.C.) 1]**, this Court upon taking*

into consideration the effect of the insertion of proviso to Order 6 Rule 17 held as under :

"10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under: "Provided 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 trial." It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

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19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

The impugned order passed by the learned Tribunal has been found in consonance with the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove. Relevant and cogent findings recorded by the learned Tribunal in para 7 of the impugned order, which deserve to be noticed here, read as under:-

“At the very outset, it is pertinent to mention that after filing of the written statement by respondents no.1 and 2, wherein, it has been stated that the vehicle no.HR05-A-3710 has been insured, through cover note bearing no.458472, the insurance company had filed the written statement, therein stating about the cover note bearing no.458472, to be false and fabricated document and that in fact, as per the official record, it relates to the insurance of the vehicle bearing no.GJ05-ZZ-8103, in the name of Pappubhai Biharibhai. However, despite such specific plea, having been taken by the insurance company, in its reply, no rejoinder had been filed, to the written statement, either by the claimants or by the respondents no.1 and 2. Thereafter, the evidence had also been led not only by the claimants, but by respondents no.1 and 2, as their counsel had tendered into evidence certain documents and closed their evidence. Thereupon, one witness had been examined by the insurance company. Now, at this stage, the application has been filed by owner Mam Chand (who is respondent no.2), for seeking amendment of the written statement, thereby asserting about the aforesaid facts of the insurance policy, having been taken through Sushil Kumar, their agent and also to seek further addition in the application for additional evidence, which was also been disposed of today itself. However, considering the belated stage, at which, the present application has been filed and also considering the fact of rejoinder, having not filed by the applicant, at appropriate stage and also considering the fact that evidence of respondents no.1 and 2 had been earlier closed by their counsel, after tendering certain documents, at this stage, when the evidence has already been brought on record by the insurance company, now to make adjustment of the pleadings, in consonance with the evidence brought on record by the insurance company, the present application, as such, sans merit and the same is hereby dismissed.”

During the course of hearing, learned counsel for the petitioner

could not point out any patent illegality or perversity in the abovesaid findings recorded in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on true facts of the case and it has also been passed, strictly in accordance with law. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

21.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No