

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

CR No.3281 of 2013(O&M)

Date of decision: 30.11.2017

Gopi Ram

.....Petitioner

VERSUS

Jai Parkash

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Vijarania, Advocate for the petitioner.

Mr. Raman Chawla, Advocate for the respondent.

REKHA MITTAL, J.

CM No.25581-CII of 2017

Heard.

Allowed as prayed for.

Annexure P-7 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.3281 of 2013

The present petition directs challenge against order dated 29.04.2013 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Siwani whereby application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the written statement has been dismissed.

Counsel for the petitioner has submitted that the respondent/plaintiff has filed a suit for specific performance of agreement to sell dated 26.05.2008 in respect of land measuring 11 kanal 6 marlas,

detailed in head-note of the plaint. The petitioner filed written statement and in turn controverted plea of the respondent/plaintiff with regard to execution of agreement of sale. However, the petitioner failed to plead certain material and vital facts and for that reason, the instant application was filed to amend the written statement. It is argued with vehemence that the facts sought to be added by way of amendment are not only based upon oral version but also supported by two legal notices dated 25.10.2008 (Annexures P-5 and P-6), served by the plaintiff/respondent through Sh. Ved Parkash Arya, Advocate, District Court, Bhiwani. It is argued with vehemence that a serious prejudice shall be caused to the petitioner in case he is not permitted to amend the written statement as proposed. According to learned counsel, amendment of pleadings can be allowed at any stage and the law with regard to amendment of written statement stands on a better footing than that of a plaint. It is further argued that delay attributable to the petitioner in filing the application can well be taken care of in pecuniary terms. In addition, it is argued that the petitioner is even ready to forego his right to recall the plaintiff and his witnesses for the purpose of cross-examination on the basis of amendment in the written statement with liberty to establish his defence plea in accordance with law.

Counsel representing the respondent/plaintiff has supported the impugned order with the submission that application for amendment is clearly hit by the proviso appended to Rule 17 of Order 6 CPC as the same has been filed after the plaintiff already having examined as many as five witnesses. It is argued that in case the proposed amendment is allowed, it would amount to allowing the petitioner to raise averments which are

totally new and alien to the stand taken in the original written statement. It is argued that allowing the amendment would amount to denovo trial and consequential delay in conclusion of the proceedings when otherwise the petitioner is interested to prolong the trial.

I have heard counsel for the parties, perused the paper-book particularly various annexures appended with the petition.

Be that as it may, application for amendment does not satisfy the twin requirements of proviso appended to Rule 17 of Order 6 CPC. Nevertheless, there is no dispute about the settled position in law that amendment can be allowed at any stage of the proceedings. Equally true is that amendment of written statement stands on a better footing than that of the plaint.

Hon'ble the Supreme Court in **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27** culled out certain principles to be taken into account while deciding an application for amendment of pleadings. A relevant extract from para 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

In the case at hand, it is not plea of the respondent/plaintiff that in case the proposed amendment is allowed, it would cause such a prejudice to the plaintiff which cannot be remedied by costs. Counsel for the respondent has not advanced any argument that the instant application is mala fide or bereft of bona fide. The sole contention raised by counsel for the plaintiff is that in case the amendment is allowed, it may lead to denovo trial and delay in conclusion of proceedings when otherwise the petitioner is interested in prolonging the case. The statement made by counsel for the petitioner to forgo recalling of witnesses for cross examination would take care of anxiety of the respondent/plaintiff qua allowing amendment would delay conclusion of trial. This apart, delay itself cannot be a ground for denying the opportunity to amend the pleadings if otherwise permissible.

As has been rightly argued by counsel for the petitioner, the petitioner has sought to amend the written statement not only based upon oral statements of facts but also documents i.e. two legal notices purported to be issued by the respondent/plaintiff through an Advocate. That being so, dismissal of application for amendment of the written statement

particularly to plead the facts with regard to service of notices (Annexures P-5 and P-6), in my considered opinion, would be of serious consequence that may lead to travesty of justice. I would hasten to add that by way of the proposed amendment, the petitioner has neither sought to withdraw from any admission nor raised any contradictory plea qua his stand that agreement to sell was not executed by him. In this view of the matter, order passed by the trial Court rejecting plea of the petitioner cannot be allowed to sustain and ordered to be set aside.

For the foregoing reasons, the petition is allowed. Application for amendment of the written statement is allowed subject, however, to the following conditions:-

1. The petitioner shall not be entitled to recall the witnesses of the plaintiff already examined for the purpose of further cross examination qua the facts sought to be added by way of amendment.
2. After evidence is adduced by the petitioner/defendant, the respondent/plaintiff shall be entitled to rebut the evidence qua the additional facts (facts added by amendment). However, this observation would not cause prejudice to the plaintiff's right to adduce evidence in rebuttal, if otherwise legally permissible.
3. The petitioner shall get one opportunity to file the amended written statement.
4. The petitioner shall prepare a demand draft of Rs.10,000/- towards costs to be handed over to the

respondent or his counsel before the trial Court at the time of filing of amended written statement.

Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case nor will it cause prejudice to either of the parties at the time of final adjudication of the suit on merits.

30.11.2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no