

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

CR No.3606 of 2015

Date of Decision: 13.07.2017

M/s Vikram Electric Equipment Pvt. Ltd. Petitioner
Versus
Chankya Education Society ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Harsh Bunger, Advocate
for the petitioner.

Mr. Pankaj Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed the present revision petition against the order dated 06.12.2014 passed by the Civil Judge, Junior Division, Gurgaon, vide which application for amendment of written statement was allowed in terms of Order 6 Rule 17 CPC.

[2]. Petitioner/plaintiff filed a suit for recovery against the respondent/defendant. Plaintiff alleged that respondent had approached the plaintiff with an offer to sell land measuring 22 kanals situated in the revenue estate of village Maidwas, Tehsil and District Gurgaon. After negotiations, the sale consideration was settled to the tune of Rs.3,10,00,000/- per acre. Agreement to sell was executed on 31.07.2006. The total sale consideration was worked out to be Rs.8,52,50,000/-, out of which an amount of Rs.80,00,000/- was paid to the defendant vide cheque No.107888 dated 29.07.2006 drawn on ABN Amro Bank,

Gurgaon. The said cheque was issued by the broker of the plaintiff on behalf of the plaintiff. The target date for execution of sale deed was fixed on or before 15.08.2006. Since 15.08.2006 was holiday, therefore, on 17.08.2006, the sale deed was to be executed. Plaintiff alleged that on the date fixed, the defendant failed to turn up for execution of sale deed, whereas plaintiff was ready and willing to perform its part of obligation. The defendant kept on putting the plaintiff on one pretext or the other so as to frustrate the contract. The plaintiff further pleaded that about one week prior to filing of the suit, plaintiff came to know that the defendant had sold the land in question to one Smt. Madhu Gupta vide registered sale deed dated 14.08.2006, which was subsequently followed by a deed of correction dated 25.09.2006 and mutation No.2618 was sanctioned.

[3]. Plaintiff filed a suit for recovery with the aforesaid pleadings seeking to recover the amount of Rs.96,80,000/- being principal and the interest accumulated @ 12% per annum of Rs.80,00,000/- (earnest money) from 31.07.2006 to 30.04.2008. *Pendente lite* interest and future interest @ 12% per annum were also sought to be awarded from the date of filing of suit till final realization of the amount. The suit was prayed to be decreed with costs.

[4]. In para No.3(ii) of the plaint, following pleadings were

made:-

“ii) That out of the total sale consideration a sum of Rs.80,00,000/- (Rs. Eighty lacs only) was paid to the defendant vide cheque bearing No.107888 dated 29.07.2006 drawn on ABN Amro Bank, Gurgaon. The aforesaid cheque was issued by the broker of the plaintiff on behalf of the plaintiff.”

[5]. In the written statement filed by the defendant, defendant denied the allegations made in para No.3(ii) of the plaint by way of following plea in the written statement:-

“3. That the para No.3 of the plaint as alleged is not admitted and the same is denied. It is denied that the said agreement was duly executed by the defendant and the plaintiff. The sub paras of the plaint 3(i) to 3 (viii) as alleged is not admitted and the same is denied.”

[6]. Plaintiff completed its evidence and the case is fixed for defendant's evidence. The defendant sought to get the written statement amended on the ground that the defendant had entered into the sale agreement dated 29.07.2006 with one Jaipal son of Ved Singh resident of village Jharsa, Tehsil and District Gurgaon, who had agreed to purchase the land measuring 22 kanals from the defendant @ Rs.2,58,00,000/- per acre and he paid a sum of Rs.80,00,000/- vide cheque No.107888 dated 29.07.2006 drawn on ABN Amro Bank, Gurgaon as earnest money. The original sale agreement was

kept by purchaser Jaipal and a photocopy of the same was handed over to the authorized person of the defendant. The aforesaid agreement was frustrated on account of non-performance on the part of purchaser and the amount was forfeited as per agreement. The photocopy of the said agreement was earlier not traceable and when the copy of the agreement was traced by the defendant, then the defendant sought to elaborate the defence of denial taken in the written statement by way of elaborating the plea of denial in the context of agreement to sell dated 29.07.2006 executed between the defendant and Jaipal and the factum of payment of Rs.80,00,000/- received vide the cheque in question from the said Jaipal.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioner vehemently submitted that after framing of issues on 29.08.2013, the conduct of the defendant in delaying the suit was deprecated by the Court by passing the orders dated 15.05.2014 and 09.07.2014. Learned counsel further submitted that amendment in the written statement cannot be allowed after commencement of the trial. Learned counsel placed reliance upon **M/s Modi Spinning and Weaving Mills Co. Ltd. and another Vs. M/s Ladha Ram and Co., 1977 AIR (SC) 680, S. Malla Reddy Vs.**

M/s Future Builders Co-operative Housing Society and others, 2013(2) RCR (Civil) 957 and **Revajeetu Builders & Developers Vs. Narayanswamy & Sons and others, 2010(1) RCR (Civil) 27** and contended that a new case cannot be set up by the defendant under the garb of amendment and in view of conduct of the defendant, the amendment cannot be allowed at such a belated stage, particularly when the trial had already commenced.

[9]. On the other hand, learned counsel for the respondent vehemently submitted that in reply to para No.3(ii) of the plaint, the defendant has denied the execution of said agreement in para No.3 of the written statement. The use of word 'broker' in para No.3(ii) of the plaint was sought to be explained by way of necessary amendment in the written statement to the extent of placing reliance upon the agreement dated 29.07.2006 executed between the defendant and one Jaipal in respect of purchase of land measuring 22 kanals and the said amount of Rs.80,00,000/- was paid vide cheque No.107888 dated 29.07.2006 by the aforesaid Jaipal and the word 'broker' used in para No.3(ii) of the plaint has necessary explanation in the context of elaboration of fact sought to be introduced by the defendant by way of proposed amendment. Learned counsel further submitted that amendment in the written statement

would enable the Court to decide the controversy in an effective manner. Learned counsel placed reliance upon **M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362** and contended that on the ground of elaboration of defence in support of earlier plea taken in the written statement, the amendment can be allowed by means of Order 6 Rule 17 CPC.

[10]. This Court vide order dated 11.12.2015 ordered that proceedings before the lower Court can go on and the respondent can cross examine the witnesses in terms of amended written statement. However, passing of final order was stayed.

[11]. It is mandatory on Court to allow all amendment which are necessary for the purpose of determining the real 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 merits of the case are not to be adjudged at the stage of allowing the prayer for 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 between the parties. All *bona fide* amendments which are necessary for determining the real issue between the parties should be allowed. First part of Rule 17 CPC gives discretion 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]. In ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Para Nos.20 and 23 of the aforesaid judgment are being reproduced hereasunder:-

“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]. Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may be necessary for real determination of issues between the parties. Amendment can be allowed, even after commencement of the trial, if in the opinion of the Court that amendment could not be brought on despite knowledge and due diligence by the party and the party could not have raised the matter before commencement of the trial. The amendment in the written statement has to be liberally construed unless and until serious prejudice or irreparable loss is caused to the opposite side or the amendment is *mala fide*.

[15]. The facts involved in the present case if decided in the light of aforesaid principles would give rise to a factual matrix that plea of denial has already been taken by the defendant in para No.3 of the written statement. The aforesaid denial is sought to be explained in the context of broker who paid the earnest amount of Rs.80,00,000/- to the defendant. The defendant has projected the second agreement executed between the defendant and one Jaipal and it was asserted that Jaipal issued the cheque in question in a sum of Rs.80,00,000/-

to the defendant. The correctness and falsity of statement cannot be commented upon at this stage as the same would be subject matter of appreciation of evidence and ultimate trial.

[16]. The precedents relied upon by the learned counsel for the petitioner cannot be disputed, but the same are applicable only in the context where a new case is going to be set up by the defendant by means of introducing amendment in the written statement or the same would cause material prejudice to the plaintiff beyond repair. From the pleadings, I find that the proposed amendment is just an elaboration of fact i.e. the denial made by the defendant in para No.3 of the written statement. The denial to para No.3(ii) of the plaint is sought to be explained in the context of receiving an amount of Rs.80,00,000/- from Jaipal in pursuance of the agreement dated 29.07.2006, whereby the defendant in turn further agreed to sell 22 kanals of land @ Rs.2,58,00,000/- per acre to said Jaipal and received the cheque No.107888 dated 29.07.2006 drawn on ABN Amro Bank, Gurgaon as earnest money.

[17]. At this stage, this Court is not supposed to comment upon the validity and evidentiary value of the proposed amendment, lest it may prejudice the case of either sides at the time of trial, but the amendment in question can be allowed as the defendant is entitled to even take inconsistent plea by way

of amendment. The plea which is being sought to be introduced by way of amendment is not even inconsistent with the original plea of denial taken by the defendant in the written statement, rather the same is found to be an elaboration of fact with reference to agreement dated 29.07.2006 i.e. the amendment in which the denial to the pleadings of the plaint was made by the defendant. Learned counsel for the respondent has informed the Court that in pursuance of order dated 11.12.2015, the cross examination of the witnesses in terms of amended written statement has been done by the defendant.

[18]. In view of observations made hereinabove, I find that there is no scope for interference in the revision petition. The same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

13.07.2017

prince

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No