

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 3486 of 2017 (O&M)

Date of Decision:22.11.2017

Rakesh Kumar and another

---Petitioners

vs.

Mehar Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Parminder Singh, Advocate
for the petitioners

Mr. Vivek Goel, Advocate
for respondent No. 1

Rekha Mittal, J.

C.M.No. 17581-CII of 2017

Heard.

Allowed as prayed for. Annexures P-6 to P-9 are taken on
record subject to just exceptions.

Application stands disposed of accordingly.

C.R.No. 3486 of 2017

The present petition directs challenge against order dated
17.4.2017 (Annexure P-6) passed by the Additional Civil Judge (Senior
Division), Karnal, whereby application for amendment of the written
statement has been dismissed.

Counsel for the petitioners/defendants has submitted that

respondent No. 1/plaintiff has filed a suit for specific performance of agreement dated 3.10.2011 in respect of land measuring 12 kanals on the averments that the petitioners entered into agreement to sell dated 1.4.2011 with Kaptan Singh respondent No. 2 and on the basis of said agreement, they agreed to sell the suit property in his favour. The petitioners filed written statement and raised a plea that they have no concern with the agreement dated 3.10.2011 and there was no agreement dated 1.4.2011. The respondent plaintiff lodged FIR No. 487 dated 16.10.2012 against the petitioners alleging that possession of land under agreement was illegally and unlawfully taken by the petitioners. The petitioners filed CRR No. 3166 of 2013 and Criminal Miscellaneous petition before the High Court and raised the plea that the agreement dated 1.4.2011 was cancelled on 8.6.2012, therefore, agreement dated 3.10.2011 is nullity. The plaintiff moved application before the trial court to file replication to the written statement of the petitioners by pleading that contradictory plea has been raised in the quashing petition that agreement to sell dated 1.4.2011 was rejected. Permission to file replication by respondent No. 1 was rejected vide order dated 13.5.2016 (Annexure P-3) passed by the trial court. It is argued that as the petitioners had instructed their previous counsel with regard to cancellation of agreement dated 1.4.2011 but the said plea was not raised in the written statement filed in the previous suit qua mandatory injunction and resultantly cancellation of agreement dated 1.4.2011 could not be pleaded in the instant written statement, petitioners cannot be allowed to suffer because of mistake committed by their counsel when otherwise scope of amendment of written statement is quite liberal

and the defendants can raise inconsistent/contradictory/alternative pleas by way of amendment.

Another submission made by counsel is that Mehar Singh respondent/plaintiff appeared in the witness box, tendered into evidence affidavit (Annexure P-7) by way of examination in chief. In his cross examination dated 15.7.2017, he was asked a specific question with regard to entry No. 2396 dated 8.6.2012 made in the Register of Notary Public pertaining to cancellation of agreement dated 1.4.2011 that also bears signatures of the respondent/plaintiff who has admitted his signatures at point 'A' of Ex. D-1, sufficient to show that the respondent/plaintiff has also admitted the factum of cancellation of agreement dated 1.4.2011. Further argued that the respondent/plaintiff has failed to produce on record any such agreement executed in his favour by Kaptan Singh at the instance of Ramesh and Rakesh sought to be referred to in reply to the question pertaining to entry No. 2396 qua cancellation of agreement between Kaptan Singh and Rakesh & Ramesh.

Counsel representing the respondent/plaintiff has supported the impugned order with the submission that plea of the petitioners as to why the facts sought to be added could not be pleaded earlier is mala fide, therefore, the trial court has rightly rejected application for amendment of the written statement. It is argued that prior to filing of suit for possession by way of specific performance of contract in January 2014, the respondent/plaintiff filed a suit for mandatory injunction/permanent injunction and the plaint is Annexure P-1. The petitioners (defendants No. 1 and 2 in the said suit) filed written statement and denied the agreement

dated 1.4.2011 executed by Kaptan Singh in their favour and the agreement executed by them in favour of the respondent/plaintiff. Similarly, in the written statement filed in the instant suit, they have denied both the agreements by reiterating their stand taken in the previous litigation. It is further argued that plea of the petitioners that they had instructed their previous counsel who filed the written statement in the suit for mandatory injunction with regard to cancellation of the agreement dated 1.4.2011 but as he failed to plead the said fact in the written statement and counsel in the present case prepared the written statement on the basis of previous written statement gets falsified and belied from the fact that Sh.Bhandari, Advocate, was counsel for the petitioners in the suit for mandatory injunction as well as in the subsequent suit for specific performance of the agreement. Another submission made by counsel is that the respondent/plaintiff filed an application for permission to file replication by raising a specific plea that there is contradiction in stand of the petitioners in the written statement viz-a-viz the allegations raised in the Criminal Miscellaneous petition filed for quashing of aforesaid FIR lodged at the behest of the respondent/plaintiff. The petitioners not only opposed the application of the respondent but did not immediately file an application for amendment of the written statement. It is argued that had it been true that the petitioners had instructed their counsel with regard to cancellation of agreement to sell dated 1.4.2011 and he had failed to plead that fact, application filed by the respondent/plaintiff highlighting the aforesaid fact would have been a God sent opportunity to be grabbed by the petitioners by filing an appropriate application under Order 6 Rule 17 of the CPC without any delay.

With regard to signatures of Mehar Singh on entry No. 2396, it is urged that Mehar Singh has never admitted any such cancellation or his having signed the entry as a witness to cancellation of agreement dated 1.4.2011. It is argued that the facts elicited in cross examination of Mehar Singh would be appreciated by the court below at the time of decision of the suit and the petitioners cannot take advantage of signatures of Mehar Singh at point 'A'/Ex. D1 to seek amendment of the written statement.

I have heard counsel for the parties, perused the paper book with able assistance of counsel for the parties.

At the outset, it is pertinent to mention that there is no doubt about the settled position in law that amendment of written statement stands on a better footing than that of plaint and amendment of pleadings can be allowed at any stage of the proceedings despite proviso to Rule 17 of Order 6 of the CPC has been appended by way of amendment with effect from 1.7.2002.

In the instant case, plea of the petitioners that they had engaged Sh. P.S.Rana, Advocate, in the suit for mandatory injunction and he failed to plead the fact of cancellation of sale deed which further could not be mentioned in the present written statement prepared by Sh. Bhandari, Advocate on the basis of written statement filed in the earlier suit gets falsified and belied from uncontroverted contention of the respondent/plaintiff that the petitioners were represented by the same counsel in both the suits for mandatory injunction filed earlier as well as suit for specific performance filed subsequently. This fact alone is sufficient to prove that plea raised by the petitioners forming basis for seeking

amendment is incorrect and the same has been manufactured with a clear intent to wriggle out of contradictions qua plea of the petitioners in regard to agreement dated 1.4.2011 in the civil litigation viz-a-viz their plea in the criminal miscellaneous petition filed before this Court. As has been rightly argued by counsel for the respondent/plaintiff that had it been true that the petitioners had disclosed to their counsel about cancellation of the agreement dated 1.4.2011 and counsel had failed to incorporate the said fact in the written statement, the petitioners would have immediately swung into action for amendment of the written statement the moment respondent/plaintiff filed an application for permission to file replication in order to bring on record the aforesaid contradiction.

As per the settled position in law, a party who approaches the court with uncleaned hands is not entitled to indulgence in exercise of discretionary jurisdiction of the Court or on equitable considerations. In view of the above, I do not find any reason to interfere in the order impugned.

With regard to plea of the petitioners that the respondent/plaintiff has admitted his signatures at point 'A'/Ex.D1 qua entry No. 2396, it would be open for the petitioners to highlight the said fact and derive advantage therefrom, if permissible, at an appropriate stage of the proceedings but that cannot form the basis for allowing amendment of the written statement.

For the foregoing reasons, the petition fails and is accordingly

dismissed. However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final decision of the suit on merits.

(**Rekha Mittal**)
Judge

22.11.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No