

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

**CR No.4094 of 2015**

**Date of Decision: 27.11.2017**

Nand Kishore

.....Petitioner

Versus

General Public and others

... Respondents

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

Present:Mr. S.S. Ghangas, Advocate  
for the petitioner.

Mr. S.S. Virk, Advocate  
for respondents No.2 to 6.

\*\*\*

**RAJ MOHAN SINGH, J.(ORAL)**

[1]. Defendant No.2/petitioner is in revision petition against the order dated 19.05.2015 passed by Additional Civil Judge, Senior Division, Panipat whereby prayer for amendment of the written statement under Order 6 Rule 17 CPC was declined.

[2]. A petition under Section 372 of the Indian Succession Act was filed by respondents No.2 to 6. Defendant No.2/petitioner filed counter claim i.e. adjustment in the amount withdrawn by respondent No.5/Sushma Rani. At the time of filing of the written statement and counter claim, defendant No.4 was not aware about the Will executed by Kamla Devi.

[3]. During course of leading evidence by respondents No.2 to 6, the factum of Will came to the knowledge of defendant No.2 in which details of FDRs and small savings were shown

and also the manner in which Will is to be operated. After deducting the commission etc, the amount under FDRs and small savings were to be distributed in equal shares to all the sons and daughters. Respondent No.5 was nominee as well as joint account holder with Kamla Devi and has withdrawn the total amount under FDRs without disclosing the same in the petition under Section 372 of the Indian Succession Act. Now the proportionate share lying in the small savings is being offered to the petitioner.

[4]. The application for amendment in the written statement was filed on 06.08.2014 i.e. at the time when defendant evidence was in progress after conclusion of the plaintiff evidence. The elaboration of the facts for being subject matter of the Will and the manner in which the amount was to be withdrawn would be necessary to be decided by the trial Court after taking cognizance of the stand of both the parties and evidence led by them. The amendment of the written statement has to be liberally construed and the defendant is entitled to take even inconsistent pleas in the written statement.

[5]. In the instant case, amendment in the written statement in the light of facts already narrated in the preceding paras would show that the stand of defendant No.2/petitioner is in consonance with the evidence of the parties. The amendment of

the written statement is always on a different pedestal than the one made for amendment of the plaint.

[6]. 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.”*

[7]. Keeping in view the nature of amendment which is sought to be introduced by way of proposed amendment at this stage of trial, I deem it appropriate to set aside the impugned order dated 19.05.2015 passed by Additional Civil Judge, (Senior Division), Panipat and allow the application for amendment of written statement. This revision petition is accordingly allowed.

27.11.2017  
prince  
**Whether Reasoned/Speaking**  
  
**Whether Reportable**

**(RAJ MOHAN SINGH)**  
**JUDGE**  
  
**Yes/No**  
  
**Yes/No**