

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

CR No.4992 of 2017(O&M)

Date of decision: 26.9.2017

Raghbir Singh

.....Petitioner

VERSUS

Krishan Pal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Karan Singh, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 03.07.2017 (Annexure P-6) passed by the Civil Judge (Junior Division), Yamunanagar at Jagadhari whereby application filed by the respondent/defendant for amendment of the written statement has been allowed.

Counsel for the petitioner/plaintiff has submitted that the petitioner has filed a suit for symbolic possession by way of specific performance of agreement of sale dated 02.09.2011 in respect of residential house, detailed in head-note of the plaint. The respondent/defendant filed the written statement (Annexure P-2) and in turn, specifically denied his having entered into agreement dated 02.09.2011 with the averments that the agreement is false and fabricated and the plaintiff has forged his signatures on the agreement. It is further argued that after framing of issues and the petitioner having examined certain witnesses, the instant

application was filed seeking amendment of the written statement to plead certain facts as to how signatures of the respondent/defendant were obtained on the documents including the alleged agreement to sell. It is further submitted that the respondent raised a plea that he had explained all the facts to his previous counsel as to the circumstances under which his signatures were obtained but the previous counsel has not elaborated those facts for the reasons best known to him. According to counsel, such a plea raised by the respondent/defendant cannot constitute a good ground for allowing amendment of the written statement when otherwise such an amendment is clearly hit by the proviso to Rule 17 of Order 6 appended by the amendment Act of 2002. In support of his contention, he has referred to judgment of this Court **Jeetinder Singh Vs. Inderjit Singh Batra and others, 2012(24) RCR (Civil) 176.**

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

The principles with regard to amendment of pleadings were culled out by Hon'ble the Supreme Court of India in **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27.** Paras 67 and 68 of the judgment, relevant in the present context, 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.”

As per the settled position in law, amendment of written statement stands on a better footing than that of a plaint because the question of limitation would not be involved by amendment of the written statement. The defendant is permitted to raise alternative and contradictory pleas for defending the cause put forth by the plaintiff. In the case at hand, initially the respondent/defendant has altogether denied the agreement to sell but by way of proposed amendment he has sought to add the facts admitting his signatures on the agreement to sell but with the averments as to how his signatures were obtained. In the instant case, application has been filed even before the petitioner has concluded his evidence and the respondent is yet to start his evidence. Counsel for the petitioner has failed to convince this Court as to how the proposed amendment would cause such a prejudice to the petitioner for which cost is not the remedy. It is not the plea of the petitioner that the application for amendment is mala fide or is not bona fide. It may be true that plea of the respondent that he had explained the facts to his earlier counsel who failed to bring the same on record may not be such a good ground to be accepted on its face value but in view of the discussion made hereinbefore, I do not

find any reason to interfere in the discretion exercised by the trial Court in exercise of limited revisional jurisdiction. In the referred authority, the amendment was sought at the fag end of the trial and that was also one of the reason that weighed in the mind of this Court to decline prayer of the petitioner for interfering in the order passed by the trial Court dismissing the application for amendment of the written statement.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to either of the parties during trial.

SEPTEMBER 26, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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