

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

Date of Decision: 21.08.2017

1. CR No.5498 of 2017

Elite County Developers Pvt. Ltd. and anotherPetitioners

Versus

Gajjan Singh

... Respondent

2. CR No.5526 of 2017

Elite County Developers Pvt. Ltd. and anotherPetitioners

Versus

Inderjit Siingh

... Respondent

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

Present:Mr. Bikramjit Aroura, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.5498 of 2017 titled Elite County Developers Pvt. Ltd. and another and Gajjan Singh and CR No.5526 of 2017 titled Elite County Developers Pvt. Ltd. and another Vs. Inderjit Siingh are being disposed of. Since common question of law and facts are involved in both the revision petitions, therefore, the facts are being taken from CR No.5498 of 2017.

[2]. Petitioners have assailed the order dated 13.10.2016 passed by Additional Civil Judge (Senior Division), Amritsar, vide which application under Order 6 Rule 17 CPC for

amendment of the written statement was dismissed.

[3]. Plaintiff/respondent filed a suit for specific performance of agreement to sell dated 24.12.2013 executed by the defendants in favour of the plaintiff in respect of the suit property.

[4]. Petitioners/defendants filed written statement, thereby admitting the agreement to sell and receipt of earnest money on 03.12.2015. Thereafter, the application for amendment in the written statement was filed on the ground that on seeing the agreement to sell dated 24.12.2013, they found that the agreement to sell was not executed by the defendants, nor the earnest money was received. The application for amendment was filed on 15.07.2016. The amendment was sought to be introduced on the ground that the admission made in the previously filed written statement was on account of misconception.

[5]. Trial Court dismissed the application on the ground that the admission made in the written statement cannot be withdrawn in view of the fact that the application for amendment was filed after a delay of 225 days from the filing of the written statement. The issues have already been framed on 06.04.2016 and the evidence of the plaintiff has also started.

[6]. I have heard learned counsel for the petitioners.

[7]. It could not be satisfactorily brought on record as to on what basis the earlier written statement was filed when agreement to sell was not available before the defendants for perusal as per their own showing. The time gap between the earlier written statement and application for amendment of written statement was about 225 days and the trial Court had already proceeded in terms of framing of issues on 06.04.2016. The suit itself was filed on 30.09.2015. The claim made by the defendants in terms of proposed amendment was to the effect that the agreement to sell was forged and fabricated.

[8]. Learned counsel for the petitioners relied upon **Vidyabai and others Vs. Padmalatha and another, 2009(1) RCR (Civil) 763, Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others, 2007(2) RCR (Civil) 830, Baldev Singh and others Vs. Manohar Singh and another, 2006(3) RCR (Civil) 844, Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and another, 1983 AIR (SC) 462, Ramanand Vs. Sedhu and others, 2010(2) RCR (Civil) 31, Sagar Singh Slathia Vs. Surinder Pal Singh, 2009(3) RCR (Civil) 37, Gautam Sarup Vs. Anand Sarup and others, 2006(4)RCR (Civil) 248, Gujjar Singh Vs. Gulzar Singh, 1992(1) RRR 13** and contended that amendment of written statement has to be liberally construed. The amendment in the written statement

stands on different pedestal, than that of amendment in the plaint. Defendant is entitled to take new defence and can also plead inconsistent pleas in the amendment. Even the admissions in the pleadings can be explained. It is always open to the defendant to explain the admission by seeking amendment in the written statement. A litigant cannot be punished for a lapse on account of his counsel who despite having full knowledge of the document could not plead the same in an appropriate manner, thereby admitting the agreement to sell in the written statement filed at the first occasion.

[9]. I have considered the submissions made by learned counsel for the petitioners.

[10]. There is no dispute with regard to the ratio as held by the Hon'ble Apex Court as well as by other Courts. The admission in the pleadings can be explained in appropriate cases for the satisfaction of the Court. In the instant case, unconditional admission was made when first written statement was filed in which execution of agreement to sell and receipt of earnest money were categorically admitted. Thereafter, trial Court proceeded with the case and even issues were framed on 06.04.2016 and the evidence of the plaintiff started.

[11]. The application for amendment of the written statement came to be filed on 15.07.2016 i.e. after a delay of about 225

days from the filing of the written statement. Learned counsel could not explain as to on what basis the initial written statement was filed without there being any agreement to sell with the defendants. The aforesaid stand does not stand to reason in view of the fact that no sane person would file the written statement without seeing the agreement to sell. It appears that the defendants gave a second thought to the litigation after framing of the issues and thereafter, turned around and alleged that the agreement to sell and receipt of payment of earnest money were fraudulent in nature. The admission made in the first written statement was not explained. The changed stand to the effect that the agreement to sell was never executed by the defendants, nor they had ever received the earnest money were the pleas which were totally in contrast with the earlier admissions made in the pleadings. The admission made in the pleadings of the written statement could not be satisfactorily explained by the petitioners.

[12]. In **Balbir Singh Vs. Jaspal Singh, 2014(1) CCC 784 (P&H)**, it was held that the admission in the pleadings cannot be allowed to be withdrawn in a routine manner. Hon'ble Apex Court in **S. Mala Reddy Vs. Future Builders Co-operative Housing Society, 2013(2) CCC 845** also held the aforesaid proposition that the admission in the pleadings cannot be

withdrawn in normal circumstances.

[13]. The proposed amendment cannot be held to be *bona fide* in nature, particularly when it could not be disclosed by the petitioners that on what basis, the earlier written statement was filed and what were those circumstances which ultimately led to filing of the admitted written statement in respect of agreement to sell and receipt of earnest money at the first instance. Straight-way labeling the aforesaid written statement and receipt to be result of fraud and fabrication are the pleas, which are vertically opposite to the earlier stand taken by the defendants/petitioners in the written statement. The circumstances have not been explained except to allege that now the perusal of agreement to sell dated 24.12.2013 had given different understanding of fact to the defendants. In my considered opinion, such type of explanation cannot take away the right accrued to the plaintiffs on account of admission in the written statement made by the defendants at the first instance. In **Ram Niranjana Kajaria Vs. Sheo Parkash Kajaria and others, 2015(4) RCR (Civil) 580**, explanation given in the context of disclosing the circumstances in which the admission was made by the defendant was negated.

[14]. The admission made in the pleadings cannot be withdrawn by way of amendment. Petitioners want to resile from

the earlier admission made in the written statement and virtually want to impeach their own credibility in filing the earlier written statement. Even though, the amendment of the written statement is to be liberally construed and the defendant is entitled to take inconsistent pleas in the written statement, but in a case of admission made in the written statement and thereafter, progress made by the trial Court and filing of the application after about 225 days from the earlier written statement would debar the defendants from taking away valuable rights accrued in favour of the plaintiffs on account of such an admission made in the written statement.

[15]. In the light of aforesaid, I do not find any error of jurisdiction in the order dated 13.10.2016 passed by Additional Civil Judge (Senior Division), Amritsar. Revision petitions are accordingly dismissed.

[16]. A photocopy of this order be placed on the file of connected case.

21.08.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No