

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

**CR No.6659 of 2016(O&M)
Date of Decision-12.09.2017**

Aadish Aggarwal and another

... Petitioners

Versus

Brijeshwar Swaroop and another

... Respondents

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

Present: Mr. Rajiv Kataria, Advocate
for the petitioners.

Mr. Raj Kumar Gupta, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 21.09.2016 passed by Civil Judge (Junior Division), Safidon, vide which application under Order 6 Rule 17 CPC filed by the petitioners for amendment of written statement was dismissed.

[2]. Plaintiff/Brijeshwar Swaroop filed a suit against the defendants for permanent injunction, restraining the defendants from interfering in the ownership and possession of the plaintiff over the suit land. Plaintiff claimed himself to be owner in possession of the suit land by virtue of sale deed dated 25.09.1957 and is

continuing as such in the revenue record viz. jamabandis for the year 1960-61 onwards.

[3]. Plaintiff alleged that under the garb of filing of a civil suit titled Anil Aggarwal Vs. Brijeshwar Swaroop etc., defendants have started interfering in the peaceful possession of the plaintiff over the suit property. The suit was filed on 22.11.2011 and the same was contested by the defendants.

[4]. An application under Order 6 Rule 17 read with Section 151 CPC was filed by the defendants for amendment of the written statement filed by defendants No.2 and 3 on the ground that in para No.4 of preliminary objection of the written statement words “being joint Hindu family property” were inadvertently omitted and also left out from para No.1 on merits. The words “being joint Hindu family property” are claimed to be incorporated in the pleadings of the written statement. In para No.1 of the reply of the written statement, words “The para No.1 of the plaint is totally wrong and hence denied” are sought to be pleaded with replacement of para No.1 by the proposed amendment.

[5]. The application was contested by the plaintiff.

[6]. Trial Court while dealing with the application has noticed that the proposed amendment was very much in the knowledge of the applicant/defendants as defendant No.2 is an Advocate for himself as well as on behalf of defendants No.1 and 3 and has been

representing them in the litigation. The proposed amendment is stated to be not related to the facts and circumstances of the case and no new facts can be allowed to be inserted by way of proposed amendment as it would change the nature of the suit.

[7]. The application has been preferred selectively by defendants No.2 and 3 only, whereas defendant No.1 has been kept aloof. The piecemeal application for amendment in the absence of defendant No.1 was opined to be illegal. The filing of application after about 3 and half years of filing of the original written statement was considered to be not justified, particularly when the case was fixed for defendants' evidence. Defendants have already availed seven effective opportunities to conclude their evidence. Evidence of one of the witness has already been concluded and examination-in-chief of other witnesses have also been recorded. The present application has been filed only on the pretext of further elaboration of facts and stand taken by the defendants in the original written statement. Plaintiff witnesses have already been cross examined by the defendants and no such leverage can be granted by the Court for amendment at this stage.

[8]. The Court also noticed the fact that in a suit titled Anil Aggarwal Vs. Brijeshwar Swarup etc, the plaint had already been rejected and defendant No.1 herein was the counsel representing the said suit on behalf of Anil Aggarwal. On that score, it was opined that the litigation was very much in the knowledge of the

defendants. Cumulative effect of all those observations of the trial Court resulted in dismissal of the suit for amendment of the written statement.

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

[10]. Learned counsel for the petitioners relied upon **Mahila Ramkali Devi and others Vs. Nandram (D) through LRs and others, 2015(4) Law Herald (P&H) 2839 (SC)** and contended that there is no impediment against an Appellate Court to permit amendment of the pleadings so as to enable a party to raise a new plea. Just relief cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of rule has taken place. By relying upon **Surender Kumar Sharma Vs. Makhan Singh, 2009(4) RCR (Civil) 597, 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** and **Andhra Bank Vs. ABN Amro Bank N.V. and others, AIR 2007 S.C. 2511**, learned counsel contended that all just amendments should be allowed which are necessary for complete justice in the case. Even amendment of pleadings at belated stage should be allowed, for that opposite party can be compensated with cost. Belated amendment cannot be refused if the same is found to be necessary for real determination of the issue involved in the suit. The amendment of the written statement has to be liberally construed and the same is placed at a different

pedestal than the one for amendment of the plaint. Defendant is entitled to take new defence and can plead inconsistent stand and even explain admission made in the earlier written statement.

[11]. The delay in filing the application for amendment cannot be a ground for rejection of the same as no serious prejudice is going to be caused to the plaintiff, particularly in view of the fact that defendants evidence is in progress. At the stage of amendment, the merits of the case are not to be seen. All necessary amendments are to be allowed.

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

[13]. On the other hand, learned counsel for the respondents submitted that the amendment in the written statement cannot be allowed after commencement of the trial in view of number of opportunities availed by the defendants. Knowledge and due diligence are the necessary criteria for acceptance and rejection of the amendment in the pleadings. 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, Revajeetu Builders & Developers Vs. Narayanswamy & Sons and others, 2010(1) RCR (Civil) 27 and contended that no new case can be allowed to be set up by the defendant under the garb of amendment and the conduct of the defendant can be relied for dismissal of the proposed amendment at this belated stage, particularly when the trial had already commenced.

[14]. Having considered the submissions made by learned counsel for the parties, I am of the view that delay in moving the application for amendment cannot be taken to be a ground for rejection of the proposed amendment in view of ratio laid down by the Hon'ble Apex Court in **Surender Kumar Sharma's case (supra)** and **Andhra Bank's case (supra)**. Defendant is entitled to take inconsistent plea in the written statement in view of ratio laid down in **Baldev Singh and others's case (supra)** and **Usha Balashaheb Swami and others' case (supra)**. Even defendant can plead inconsistent stand and can explain the admission made in the earlier written statement. The amendment of written statement is to be liberally construed and the same is placed at a different pedestal than the one meant for amendment of the plaint.

[15]. It is mandatory on Court to allow all amendments 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 or rejecting the prayer for amendment.

[16]. The rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest in doing complete justice between the parties. All *bona fide* amendments are to be allowed. The 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. The ratio laid down in **Usha Balashaheb Swami and others' case (supra)** can be relied in terms of para Nos.20 and 23 of the judgment. 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.”

[17]. It is a settled principle of law that all *bona fide* amendments should be allowed and even the plea of elaboration of defence in support of earlier plea taken in the written statement can be allowed in terms of ratio laid down in **M/s Estralla Rubber’s case (supra).**

[18]. The cumulative effect of above discussion can be relied to answer the present controversy and it can be observed that the petitioners have made out a case for amendment of the written statement.

[19]. In view of above, impugned order dated 21.09.2016 passed by Civil Judge (Junior Division), Safidon is set aside. Application for amendment of written statement is allowed. The proposed amendment is ordered to be taken on record. Follow up action be taken by the trial Court in accordance with law.

12.09.2017
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether Reportable

Yes/No
Yes/No