

CR No.8344 of 2016
Date of Decision: 28.07.2017

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Sudhir Rana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[2]. Defendants have sought for amendment of the written statement, thereby, adding para Nos.7 and 8 in the written statement. The aforesaid amendment was sought on the ground that there was a decision of the Court dated 24.05.2016 passed in Civil Suit No.509 of 2012 titled Reshma Devi Vs. Mahender Singh and others between the parties, which was filed prior to the institution of the present suit. On the aforesaid premise, the amendment was sought.

[3]. At the time of issuance of notice of motion on 12.12.2016, following order was passed:-

“Learned counsel for the petitioners contends that factum of decision rendered in earlier suit is sought to be incorporated by way of amendment in the written statement. Decision of the earlier suit came to be passed after filing of the present suit. The amendment of written statement is to be liberally construed and parameters of amendment of written statement are altogether different than the one required for amendment of the plaint.

Notice of motion for 24.01.2017.

Proceedings may go on, however, final order may not be passed.”

[4]. I have considered the arguments of both the sides.

[5]. Learned counsel for respondent No.1 has opposed the revision petition on the ground that after commencement of the trial, the amendment cannot be allowed. The plaintiff was in the knowledge of the document, which was sought to be incorporated by way of amendment in the written statement.

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 and Revajeetu Builders & Developers Vs.

Narayanswamy & Sons and others, 2010(1) RCR (Civil) 27

and contended that a new case cannot be set up by the defendants under the garb of amendment and in view of conduct of the defendants, the amendment cannot be allowed at such a belated stage, particularly when the trial had already commenced.

[6]. It is mandatory on the Court to allow all amendments which are necessary for real determination of the issue between the parties. The Court is not obligated to go into the correctness or falsity of the case of the parties at this stage. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice between the parties. All *bona fide* amendments which are necessary for determining the real issue between the parties should be allowed. 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.

[7]. 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.”

[8]. The amendment of written statement stands on different pedestal, than the amendment of plaint. Defendant is entitled to take even inconsistent plea while amending the written statement.

[9]. During course of arguments, learned counsel for the

petitioners submitted that he would be satisfied if the amended written statement is simply allowed to be placed on record without allowing the petitioners to lead any further evidence on record.

[10]. Keeping in view the stage of the trial of the case, I am of the opinion that the prayer is fair enough to be accepted, however subject to cost of Rs.20,000/- payable to respondent No.1. Payment of cost shall be the condition precedent for granting such indulgence by the trial Court in the aforesaid context.

[11]. Disposed of.

July 28, 2017.

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No