

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 16.10.2018

1. CR No.4126 of 2018(O&M)

Joginder Kaur

.....Petitioner

Versus

Mit Mohan Singh Kahlon and another

.....Respondents

2. CR No.4125 of 2018(O&M)

Joginder Kaur

.....Petitioner

Versus

Mit Mohan Singh Kahlon and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. R.P.S. Cheema, Advocate
for respondent No.1.

Mr. Sanjeev Kumar, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.4126 of 2018 titled Joginder Kaur Vs. Mit Mohan Singh Kahlon and another and CR No.4125 of 2018 titled Joginder Kaur Vs. Mit Mohan Singh Kahlon and another are being disposed of. Common facts are

being noticed

[2]. In CR No.4126 of 2018, petitioner has assailed the order dated 19.01.2018 passed by Civil Judge (Junior Division) Panchkula, whereby application under Section 151 CPC for permission to file fresh written statement was dismissed.

[3]. In CR No.4125 of 2018, petitioner has assailed the order dated 11.05.2018 passed by Civil Judge (Junior Division), Panchkula whereby application under Order 6 Rule 17 CPC for amendment of written statement was dismissed.

[4]. Plaintiff filed a suit for declaration to the effect that House No.445, Sector 6 Panchkula is owned by the plaintiff and defendant No.1 in equal shares and for permanent injunction, restraining defendant No.1, his wife, servants and agents etc. from interfering in the peaceful possession of the plaintiff. Petitioner Joginder Kaur was impleaded as a proforma defendant No.2 being mother of the plaintiff and defendant No.1.

[5]. An application was filed by the petitioner/defendant No.2 under Order 6 Rule 17 CPC for amendment of the written statement. The amendment was sought on the ground that before the proceedings in question, on 03.08.2017, an application was filed by the petitioner for filing fresh written statement, but the same was dismissed vide order dated

19.01.2018. The said order is the subject matter of CR No.4126 of 2018. Thereafter, application for amendment of the written statement came to be filed, which was treated as reviewing the order dated 19.01.2018 passed by the trial Court. The application was accordingly dismissed vide order dated 11.05.2018.

[6]. In the application for filing fresh written statement on behalf of defendant No.2, it was alleged that petitioner is a senior citizen aged 90 years and is living in House No.445, Sector 6, Panchkula along with defendant No.1 and his wife. Defendant No.1 and his wife are taking care of the petitioner. Plaintiff is NRI and is living in Brazil. He came to India and demanded his share in the House No.445 Sector 6, Panchkula. The house is in the name of defendant No.1. The house was constructed by defendant No.1. Plaintiff got signed some papers from the petitioner without disclosing real nature of the papers. Petitioner made numerous complaints against the plaintiff and his servants. Petitioner never engaged any counsel for filing the written statement in the aforesaid case, nor signed any written statement. Plaintiff manipulated the written statement of the petitioner/defendant No.2. Plaintiff got signatures of the petitioner fraudulently on several papers including general power of attorney and Will etc. Petitioner prayed that these

documents be considered as revoked.

[7]. The application was opposed by the plaintiff and alleged that summon was issued to defendant No.2/petitioner and the same was duly served upon her on 25.07.2014. Defendant No.2 signed the summon at the back as a token of acknowledgment. She had also received summons on behalf of defendant No.1. After receiving the summons, she engaged Sh. Kamal Joshi, Advocate. Written statement was filed after understanding the controversy. Reply to the application for interim injunction was also filed along with affidavits. She signed each and every page on 11.08.2014. She also came to the Court and got her affidavit attested from the Oath Commissioner on 11.08.2014. In proof of her identity, she had also produced her Aadhaar Card before the Oath Commissioner. Number of her Aadhaar Card was noted in the affidavits annexed with the written statement.

[8]. Petitioner filed an application for filing fresh written statement on the ground that earlier written statement was not filed by her as she never engaged any counsel nor appeared in the Court at any point of time. The application was filed on 03.08.2017 when the case was fixed for cross examination of PWs. Written statement on behalf of defendant No.2 was filed on 12.08.2014 through Sh. Kamal Joshi, Advocate. Perusal of

the written statement would show that the same was signed by the petitioner/defendant No.2 on each page. No objection was raised from 12.08.2014 to 03.08.2017. The delay in filing the application was not explained by the petitioner. In the suit, petitioner was impleaded as proforma defendant No.2.

[9]. Trial Court rejected the application on the premise that it appears from the record that earlier the petitioner was in favour of the plaintiff and with the change of circumstances, she has come to the fold of her another son/defendant No.1. The earlier stand taken in the original written statement is sought to be changed by way of filing another application. The admission made in the pleadings cannot be allowed to be explained in normal circumstances. The application was accordingly dismissed by the Civil Judge (Junior Division), Panchkula vide order dated 19.01.2018.

[10]. When prayer for filing fresh written statement was declined by the trial Court on 19.01.2018, in the second attempt, an application was filed under Order 6 Rule 17 CPC for amendment of the written statement seeking to explain the admission made in the original written statement.

[11]. The said application was declined on the ground that the prayer for filing fresh written statement was declined on 19.01.2018 and the present attempt is an act to seek

modification of order dated 19.01.2018 without challenging the same in appropriate Forum.

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

[13]. Learned counsel for the petitioner submitted that the amendment of the written statement is to be liberally construed and even admission in the pleadings can be explained. Defendant is entitled to take inconsistent pleas by way of proposed amendment even after taking stand in the original written statement.

[14]. Learned counsel relied upon ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, wherein 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.”

[15]. In **M/s Modi Spinning and Weaving Mills Co. Ltd. and another Vs. M/s Ladha Ram and Co., 1977 AIR (SC) 680,** the aforesaid principle was enunciated by the High Court and it was clarified that inconsistent or alternative pleas can be made in the written statement by the defendant. Learned counsel further relied upon **Baldev Singh and others Vs. Manohar Singh and another, 2006(3) RCR (Civil) 844,** wherein it was held that inconsistent pleas can be raised by the defendant in the written statement, but the same may not be permissible in the case of plaint. Learned counsel also placed reliance upon **M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362,** wherein the Hon'ble Apex Court held that even there was some admissions in the evidence as well as in the written statement, it was still open to the defendant to explain the same

by way of filing an application for amendment of the written statement. Mere delay of three years in filing the application for amendment of the written statement cannot be a ground for rejection of the same when no serious prejudice is shown to have been caused to the plaintiff.

[16]. The view was again reiterated in **Pradeep Singhvi and another Vs. Heero Dhankani and others, 2004(13) SCC 432,** wherein it was held that the proposed amendment does not have the effect of drastically altering the nature of defence or withdrawing the admission made earlier. Under Order 6 Rule 17 CPC, the Court has discretion to permit at any stage of the proceedings such amendment in the pleadings as would be necessary for the purpose of determining the real questions in controversy between the parties. In **Sushil Kumar Jain Vs. Manoj Kumar and another, 2009(3) RCR (Civil) 899,** the Hon'ble Apex Court held that the Court should be more liberal in allowing the amendment in the written statement than that of a plaint as the question of prejudice would be far less in case of amendment of the written statement. Addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can be allowed. Earlier views taken in **Baldev Singh and others case (supra)** and **Usha Balashaheb Swami and others case (supra)** were

reiterated.

[17]. On the other hand, learned counsel for the respondents vehemently submitted that the petitioner is only a proforma defendant in the suit. Written statement was filed by the petitioner on 11.08.2014 admitting that the ground floor of the house was constructed by the husband of the petitioner from his own source along with substantial financial assistance from respondent No.1. It was also admitted that plaintiff/respondent No.1 also provided maintenance of the house.

[18]. In pith and substance, learned counsel for the respondents has highlighted that the original written statement filed by the petitioner was based on admission in respect of contribution of the plaintiff towards construction and maintenance of the house. The application for filing fresh written statement and application for amendment of original written statement are on the same pedestal. The amendment in the written statement was declined on the ground that permission for filing the fresh written statement was declined. Permission to file fresh written statement had nexus with the proposed amendment. In a way, both causes of action were rested on the same fact. Learned counsel further submitted that application for amendment of written statement at a belated stage is impermissible. Learned counsel relied upon **Ajendraprasadji N.**

Pandey and another Vs. Swami Keshavprakeshdasji N. and others, (2006) 12 SCC 1, Gutam Sarup Vs. Leela Jetly and others, (2008) 7 Supreme Court Cases 85 and State of Madhya Pradesh and Union of India and another, (2011) 12 Supreme Court Cases 268.

[19]. It is mandatory on the 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 the prayer for amendment.

[20]. 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. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[21]. Since the plaintiffs evidence is still in progress, wherein last plaintiffs witness is to be cross examined and for the reasons recorded hereinabove, impugned orders are set aside.

These revision petitions are allowed however subject to payment of costs of Rs.15,000/- to be paid to the plaintiffs/respondents. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

October 16, 2018	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No