

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

**CR No.6518 of 2016
Date of Decision: 16.08.2018**

Rajinder Kumar

..... Petitioner

Versus

Krishan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Mayur Karkra, Advocate for
Mr. Aman Pal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Samalkha, vide which application filed by the petitioner for amendment of written statement was declined.

[2]. Defendants/petitioner sought amendment in the written statement by incorporating preliminary objections No.6 and 7 to the following effect:-

“P.O Para No.6:- That the present suit has not been filed with limitation period of three years, thus alone this suit is liable to be dismissed.

P.O Para No.7:- That the plaintiff has maintained that plaintiff had invested a sum of Rs.2 crores in the business. At the same time, the plaintiff has also maintained that he has been prevented from entering into the premises, which amounts to admission of the fact that plaintiff is not in possession over any part of the suit property. In these circumstances, suit of the plaintiff is not maintainable until and unless ad valorem Court fee is affixed on the plaint.”

[3]. The application was declined by the trial Court on the ground of delay as well as on the ground that after commencement of trial, no amendment can be allowed.

[4]. Vide order dated 29.09.2016 passed by the High Court, passing of final order by the trial Court was stayed. The proposed amendment is in respect of limitation of filing of the suit by the plaintiff and *ad valorem* Court fee payable on the plaint. The proposed amendment is not such which will change the nature of the suit in any manner. The amendment of written statement stands on different pedestal, than the amendment of plaint. No new case will be set up by the defendants and the defendants are entitled to take inconsistent plea by way of amendment in the written statement. The plea of limitation is a legal plea and the same can be raised without there being any serious opposition by the plaintiff. Even the Court is bound to see that the plaint is within limitation under Section 3 of the

Limitation Act. In respect of second proposed amendment, the Court can pass a contingent decree also in the event of finding that additional Court fee is required to be affixed on the plaint. Both the proposed amendments would not change the basic frame of the stand taken by the defendants in the written statement. The amendment of the written statement would enable the Court to decide the controversy in an effective manner as both the pleas would be available in terms of pleadings.

[5]. In ***Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others, 2007(2) RCR (Civil) 830***, the Hon'ble Apex Court has summed up the criteria for 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.”

[6]. In view of nature of amendment and facts and circumstances of the case, I deem it appropriate to accept this revision petition. Impugned order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Samalkha is hereby set aside. This revision petition is allowed, however subject to payment of costs of Rs.10,000/- to be paid to the plaintiff. Payment of costs shall be the condition precedent for granting any indulgence by the trial Court in the aforesaid context.

August 16, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No