

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

CR No.6536 of 2016

Date of Decision: 16.08.2018

Arun

..... Petitioner

Versus

Krishan and another

.....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 to amend written statement at the stage when the case was fixed for evidence of the defendants. Defendants/petitioner sought to incorporate para No.11, thereby alleging that the sale deeds dated 31.12.2007 were the result of fraud and the same were never intended to be acted upon, nor were in fact acted upon being

sham and bogus transactions.

[3]. The proposed amendment in the written statement is not such which would change the basic stand of the defendants/petitioner. Defendants are leading their evidence and they are entitled to take inconsistent pleas by way of amendment in the written statement. The amendment of written statement stands on different pedestal, than the amendment of plaint.

[4]. The case of the plaintiff is that he had purchased the land from the defendants vide the aforesaid sale deeds dated 31.12.2007. The elaboration of the stand taken in the written statement can be allowed by means of amendment of written statement on the strength of ratio laid down in **M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362**, wherein it was held that elaboration of defence in support of earlier plea taken in the written statement would be in consonance with the provisions of amendment under Order 6 Rule 17 CPC.

[5]. 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 the prayer for amendment.

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

[7]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and due diligence are the considerations on which *bona fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[8]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in

the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[9]. 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.”

[10]. Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may be necessary for real determination of issue between the parties. Amendment can be allowed, even after commencement

of the trial, if in the opinion of the Court that amendment could not be brought on record despite knowledge and due diligence by the party and the party could not have raised the matter before commencement of the trial. The amendment in the written statement has to be liberally construed unless and until serious prejudice or irreparable loss is caused to the opposite side or the amendment is *mala fide*.

[11]. The plea of the respondent No.1 that the amendment should not be allowed after commencement of the trial has to be tested on the strength of *bona fide* of the amendment. There is no blanket bar for acceptance of the plea of amendment of written statement after commencement of the trial if the amendment sought is proved to be *bona fide* in nature.

[12]. For the reasons recorded hereinabove, impugned order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Samalkha is set aside. This revision petition is allowed, however subject to 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

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned Yes/No

Whether reportable Yes/No