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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7484 of 2018
Date of Decision : 01.11.2018

KARAM SINGH. ….PETITIONER

V/S

LACHMAN DASS AND OTHERS. ….RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Y.M. Bhagirath, Advocate
for the petitioner.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition is to order dated 09.10.2018 (Annexure P-5), passed by the learned Additional Civil Judge (Senior Division), Hoshiarpur in Civil Suit titled as '***Lachhman Dass*** *versus* ***Charan Dass and others***', to the extent it partly dismissed the application of the petitioner under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement.

[2] Brief facts of the case leading to the instant revision petition are that the plaintiff-respondent filed an application for amendment of the plaint when the case was fixed for rebuttal evidence. The same was allowed vide order dated 07.09.2018 and plaintiff was allowed to amend paragraph No.12 of the plaint, where after the plaintiff filed amended plaint and the case was fixed for filing amended written statement *qua* the amendments by the plaintiff. However, when the case was fixed for filing the amended written statement, application under Order 6 Rule 17

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CPC was filed by petitioner-defendant No.3 for amendment of paragraph Nos.9, 12, 13 and 15 of the written statement.

[3] The learned trial Court allowed the amendment to paragraph No.12 of the written statement on the ground that when the original written statement was filed, petitioner-defendant No.3 had admitted the contents of paragraph No.12 of the plaint but since the plaintiff himself had amended the said paragraph by way of amendment, therefore, he was having right to file amended written statement *qua* paragraph No.12 and the question of withdrawal of admission did not arise at this stage *qua* paragraph No.12 of the written statement.

[4] Likewise, petitioner-defendant No.3 was allowed to amend paragraph Nos.13 & 15 of the written statement on account of the fact that instead of mentioning approximate amount of ₹ 70,00,000/-, petitioner-defendant No.3 wanted to mention the exact amount of ₹ 65,67,025/- besides exact dimension of the land which could not be so mentioned due to inadvertence as also in view of the fact the amendment would not change the nature of the suit, but would only elaborate what had already been stated earlier.

[5] Petitioner-defendant No.3 also sought amendment qua paragraph No.9 of the written statement so as to incorporate and deny the fact that "the value of the land measuring 37 kanals 14 marlas was paid by the plaintiff over and above the amount of ₹ 83,00,000/- already paid."

[6] The learned trial Court observed that the original plaint clearly showed that the plaintiff had categorically mentioned the above said facts in the plaint but at the time of filing of the original written statement, petitioner-defendant No.3 had not denied the above said facts

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rather had in paragraph No.9 of the written statement, categorically admitted the same and since paragraph No.9 had not been amended by the plaintiff, therefore, petitioner-defendant No.3 was having no right to amend said paragraph of the written statement. The learned trial Court held that since in the original statement, petitioner-defendant No.3 had categorical admitted paragraph No.9 of the plaint, admission made could not be permitted to be withdrawn by petitioner-defendant No.3 by way of amendment, therefore, the said amendment was dismissed.

[7] Learned counsel for the petitioner has relied upon the decision in '***Mahender Singh and another*** *versus* ***Reshma Devi and others***', *2017(3) Law Herald 2234*, to contend that amendment of written statement stands on a different pedestal than the amendment of a plaint and a defendant is entitled to take even an inconsistent plea while amending the written statement.

[8] Learned counsel has also relied upon the decision in '***Ved Parkash*** *versus* ***M/s Glaze Buildcon Pvt. Ltd. and another***', *2017(4) Law Herald 3633,* to the effect that the defendant has a right to file amended written statement corresponding to the amended plaint.

[9] Reliance has also been placed on the decision in '***Amar Singh*** *versus* ***Nirmal Singh and another***', *2016(3) PLR 430*, to contend that in considering amendment to written statement approach should be liberal and amendment should be allowed, so as to determine the real question of controversy between the parties.

[10] I have considered the submission of learned counsel for the parties. Hon'ble the Supreme Court has held that "a categorical admission cannot be resiled though a given case may be explained or clarified"

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[11] The matter in issue is squarely covered by the decision of Hon'ble the Supreme Court in '***Gautam Sarup*** *versus* ***Leela Jetly and others***', *2008(7) SCC 85*, wherein it has been held that "a categorical admission cannot be resiled though the given case may be explained or clarified." Relevant extract of the decision is reproduced as under:-

> *"What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."*

[12] Admittedly, the instant case, is not a case of explanation, but petitioner-defendant No.3 wants to resile totally from the admission made earlier.

[13] Hon'ble the Gujarat High Court in '***Muktaben Mohanjibhai Solanki and another*** *versus* ***Jagdishbhai Devrajbhai Patel***', 2010 (8) R.C.R. (Civil) 2588, held that amendment in the written statement which had the effect of permitting the respondent to resile from an admission made by him earlier is not permissible. Relevant extract of said decision is reproduced as under :-

> *"8. The question for determination by this court lies in a narrow compass that is, whether the amendment in the written statement, which amounts to withdrawal of an admission made by the respondent in the original written statement, could have been permitted? There is no dispute regarding the fact that in the original written statement the respondent has categorically admitted that the petitioners are owners-in-possession of*

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land comprised in Sub-plots Nos.111 to 116 in Revenue Survey No.310 and that the respondent is the owner in possession of 500 sq. mts. of land in Revenue Survey No.311. In the original written statement, the respondent has not disputed the validity of the Sale Deeds vide which the petitioners have purchased the suit property. By making the amendment in the written statement, the respondent seeks to resile completely from the stand taken by him earlier. The respondent not only seeks to deny the ownership and possession of the petitioners regarding Sub-Plots Nos.111 to 116 of Revenue Survey No.310, but also seeks to put up a case that the Sale Deeds vide which the petitioners have purchased the said land are null and void. Whereas the respondent had categorically admitted in the written statement that he is the owner in possession of 500 sq. mt. of land in Revenue Survey No.311, he now says that he is the owner of the suit property which, as per his earlier admission, is owner by the petitioners. In short, the amendment in the written statement that has been granted by the impugned order, has the effect of permitting the respondent to resile from the admissions made by him earlier, which is not permissible in law. The legal position in this regard is no longer res integra, and may be examined, at this stage."

"10. Applying the above principles of law to the facts and circumstances of the present case, it is evident that the respondent is not seeking a clarification, or trying to explain the admissions made by him but, in a complete volte-face, is resiling from the categorical admissions made by him. Explaining or offering a clarification regarding an admission stands on one footing whereas resiling from the same, would stand on a totally different footing. In view of the law laid down by the Supreme Court, such a course is not permissible. In the case in hand, the Trial Court had granted a temporary injunction to the petitioners, on the basis of the admitted stand taken by the respondent in the written statement. After about two years from institution of the Suit, the said amendment has been granted by the Trial Court, which is clearly not in consonance with the settled legal position. In the view of this court, in passing the impugned order, discretion has not been exercised judiciously, by the Trial Court."

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[14] In the instant case, petitioner-defendant No.3 did not deny the averments in paragraph No.9 of the plaint that the value of the land measuring 37 kanals 14 marlas was paid by the plaintiff over and above the amount of ₹ 83,00,000/- already paid. In fact, said paragraph was categorically admitted by petitioner-defendant No.3. Paragraph No.9 of the plaint was not amended by the plaintiff, therefore, petitioner-defendant No.3 has no right to amend paragraph No.9 of the written statement, so as to take away the admission already made in the written statement filed earlier. Accordingly, finding no merit, in the revision petition, the same is dismissed in limine.

(B.S. WALIA)
JUDGE

November 01, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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