

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1) CR No.58 of 2019
Date of Decision: 22.02.2019

Palak and another
...Petitioners

versus

Gurdeep Singh
...Respondents

2) CR No.177 of 2019

Palak
...Petitioners

versus

Gurdeep Singh and another
...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Pushpinder Kaushal, Advocate
for the petitioners.

Amol Rattan Singh, J.

These are two revision petitions in which petitioner Palak is common to both, with petitioner no.2 in CR no.58 of 2019, Rani, not being a petitioner in CR no.177 of 2019.

The orders impugned in each of the two petitions are passed by the same court (Additional Civil Judge (Senior Division), Jalandhar), both on November 13, 2018, but arising out of two different suits filed by respondent Gurdeep Singh, i.e. the sole respondent in CR no.58 of 2019 and the first (contesting) respondent in CR no.177 of 2019, the 2nd respondent therein

being a co-defendant of petitioner Palak in the suit and therefore impleaded only as a proforma respondent in the revision petition before this court.

The two orders impugned in this petition have both been passed dismissing the applications filed by the 1st petitioner (1st defendant in the two different suits), both applications invoking jurisdiction of the trial court under Order 6 Rule 17 of the Code of Civil Procedure, 1973 (in short “the Code”). The petitioners had sought amendment of their written statements on the same ground in both the suits, but with the two suits being different, two separate orders have been passed by the trial court.

Consequently, it is considered appropriate to first look at the order impugned in the first petition, i.e. CR no.58 of 2019 and thereafter in the second petition, i.e. CR no.177 of 2019.

CR No.58 of 2019

1. The application under Order 6 Rule 17, as is the subject matter of this petition, was filed in a suit instituted by respondent Gurdeep Singh, seeking recovery of Rs.10,00,000/- from the petitioners, on account of damages and compensation that the plaintiff considers due to him.

The subject matter of the suit shall be referred to in paragraph 15 *infra*, with it to be noticed at this point that the impugned order is one by which the application has been dismissed on the ground that it was filed at a stage when issues had already been framed by the trial court on 11.08.2016, with the application having been filed on 16.07.2018, i.e. two years thereafter and the plaintiff already having led his evidence and even having been “sufficiently cross-examined”. It was also observed by the trial court that no cross-examination on the specific issue had been made on behalf of the petitioner-defendant, i.e. with regard to her having been made to sign blank

papers.

2. In fact, vide the application the petitioners wished to incorporate in the written statement an averment that the signatures of petitioner no.1 (defendant no.1 in the suit), had been obtained by the plaintiff on blank papers at the time when she worked in his office.

In the application it was also stated in paragraph 2 that “due to inadvertently and oversight” the applicant-defendant could not mention in the written statement that the plaintiff used to obtain her signatures on some blank papers during the period that she worked in his office.

It was contended by the petitioners that no prejudice was going to be caused to the plaintiff if the amendment was allowed.

The respondent-plaintiff having filed a reply to that application before the trial court, stating therein that with his evidence already having been led by way of examination-in-chief, the proposed amendment amounted to a setting up a new case by way of a new defence.

3. Upon the aforesaid pleadings, the trial court first noticed the statutory provision, i.e. Order 6 Rule 17 CPC, further noticing that the suit was filed on 26.10.2015, with the defendants having appeared through counsel on 9.12.2015 and having filed a written statement on 23.05.2016.

Thereafter, with the issues having been framed on 11.08.2016 and the plaintiff having led his 'affirmative evidence', when the case was fixed for cross-examination of the plaintiffs' witnesses, the application came to be filed on 16.07.2018.

As already noticed, it is also stated in the impugned order that the plaintiff had been “sufficiently cross-examined” by counsel for the defendant, but with no such “plea” having been taken by her during the

cross-examination (as regards blank papers having been got signed from defendant no.1).

Hence, holding that in such a situation, with the application having been filed after 2 years of the written statement being filed, it was an after thought and was “barred by limitation”.

Further, the impugned order states that the defendant-applicant had failed to point out any plausible reason due to which the proposed amendment should be allowed, which amounted to setting up a new defence.

4. On the aforesaid reasoning, the application was dismissed.

CR No.177 of 2019

5. This case arises out of a suit filed by the respondent-plaintiff seeking possession of the suit property by way of specific performance of an agreement dated 05.08.2013, in respect of the property fully described in the plaint.

6. Again, in this case also, the plea taken in the application filed under Order 6 Rule 17 (Annexure P-4 with the petition), is to the same effect, that “due to inadvertently and oversight” the applicant (defendant no.1 in the suit, i.e. the present petitioner), could not state in her written statement (nor in this case in her reply to the application filed earlier by the plaintiff under Order 39 Rules 1 and 2), that the plaintiff used to get her signatures on some blank papers during the period that she worked in his office.

The rest of the application also reads in the same manner as the application in the other suit filed by the respondent, seeking recovery of money from the defendants.

7. In this case also, the reply filed by the respondent-plaintiff, to the application, states the same thing as was stated in the reply in the other

case, i.e. that the trial had already begun, with even the cross-examination of some of the other witnesses having been conducted and with the issues having been framed on 11.08.2016, a new fact was now sought to be inserted in the written statement which was not one that was not in the knowledge of the applicant-defendant, earlier and consequently the application could not be allowed.

8. Considering the aforesaid pleadings, in the order impugned in this petition also, the trial court gave the same reasoning to dismiss the application, as it had while dismissing the application in the other suit.

9. Before this court, learned counsel for the petitioners had submitted that amendment of a written statement only being procedural, such procedural law would take a “backfoot” in the face of the administration of justice, especially wherein an amendment does not affect the actual nature of the pleadings. He further submitted that this would be so despite the bar contained in the proviso to Rule 17 of Order 6 of the Code, because the petitioners in their application had specifically stated that it was only due to inadvertence that the plea now sought to be added could not be taken when the written statements were originally filed in each of the suits instituted by the respondent-plaintiff.

He further submitted that the stand of the petitioner in any case being that she had never entered into the agreement on the basis of which the suit seeking specific performance had been instituted, the amendment now sought would not change the nature of her defence in that suit, and as regards the suit seeking recovery of Rs.10 lacs by way of damages and compensation on account of alleged malicious prosecution against the plaintiff, again her stand had been that she had never been given complete charge of the office,

nor had she approached the plaintiff seeking money from him, nor had executed an agreement of sale in favour of the plaintiff.

In support of his contentions, learned counsel relied upon various judgments, the first of which is in the case of **Shaikh Salim Haji Abdul Khayumsab v. Kumar and others**, 2005(4) RCR (Civil) 823, essentially on the issue that procedure should give way to substantial justice.

Learned counsel specifically pointed to paragraphs 11, 13 and 14 thereof, the first of which reads as follows:-

“11. All the rules of procedure are the handmaid of justice.

The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the Statute, the provisions of the Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would have the court helpless to meet extraordinary situations in the ends of justice.”

Thereafter, after citing an earlier judgment of the Supreme Court in **Sushil Kumar Sen v. State of Bihar**, 1975 (1) SCC 774, as also one of an English Court in **Blyth v. Blyth**, 1966(1) All England Reporter 524 (HL), their Lordships further held as follows:-

“...A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.”

Learned counsel then referred to an order passed by the Supreme Court in **P. Kunjukrishna Pillai and another v. D. Sreekantan Nair and others**, SLP(C) no.2280 of 2007, decided on 14.07.2008 (Law

amendment of the written statement (in that case) should have been filed before the trial commenced, however, that could not be a ground for rejecting the application as the defendant was not “attempting to put forth any ground inconsistent with what was stated in the written statement. He was only attempting to introduce an additional ground in so far as suit schedule item no.5 is concerned.”

Therefore, on the facts and circumstances of that case (as observed in the order) the amendment sought by the defendant in that *lis* was allowed.

10. To similar effect, learned counsel has relied upon a judgment of a coordinate Bench of this Court in **Surjit Singh and others v. Amrik Singh and others**, 2016 (4) PLR 96, wherein, after referring to the case of Shaikh Salim (*supra*), it was held that it was a settled principle of law that procedural law is subservient to justice and consequently even though an application (in that case) had been filed after the commencement of the trial, the mistake inadvertently made by the plaintiff in not giving the *kill*a number and rectangle number of the suit land, could not have been refused to be introduced even after the trial had started, by way of an amendment sought in the plaint.

11. Next, learned counsel referred to a judgment of the Supreme Court in **Baldev Singh and others v. Manohar Singh and another**, 2006 (3) RCR (Civil) 844, wherein their Lordships observed that while rejecting an application for amendment of the written statement, this Court as also the trial court (in that *lis*) had passed the decision on three grounds; *viz*, that the appellants therein had made certain admissions in the written statement and as such they could not be allowed to amend it, withdrawing such admissions.

Second that the question of limitation could not be allowed to be raised by way of an amendment in the written statement and third, that inconsistent pleas in the written statement could not be allowed to be raised by way of an amendment.

12. As regards the admission that was sought to be withdrawn in the written statement, their Lordships found on a perusal of the written statement and the application for amendment, that actually there was no admission made that was sought to be withdrawn.

As regards raising the question of limitation by way of an amendment, by referring to an earlier judgment in Ragu Thilak D. John v. S. Rayappan, 2001 (1) RCR (Civil) 726, it was held that such a plea could be made subject matter of an issue after allowing such amendment.

On the question of not allowing inconsistent pleas to be taken by way of an amendment, it was held that the criteria for allowing an amendment in a plaint and in a written statement being different, adding a new ground of defence or altering the defence should be more liberally allowed.

Further, their Lordships went on to observe that they had also examined the records in that *lis* and had found that, as a matter of fact, the trial had not yet commenced, with the parties yet to file their documentary evidence in the suit and consequently, there would (in any case) be no ground to reject the amendment sought to be incorporated.

13. To similar effect learned counsel for the petitioners before this court cited a judgment of a coordinate Bench in Neetu Goel v. Yogesh Goel, 2013 (1) RCR (Civil) 667, wherein while observing that by the proposed amendment the plea already taken would not be altered but only elaborated,

it was held that there would be no bar to such amendment in the written statement.

14. Having considered the orders impugned in both the petitions, as also the arguments raised in respect of both petitions by learned counsel for the petitioners, in my opinion, these petitions cannot be allowed, for the reason that what the petitioners now seek to add in the written statement is wholly a new stand to the effect that while petitioner Palak was working in the office of the respondent-plaintiff, he used to get various blank papers signed from her and therefore the agreement of sale relied upon by him in the suit seeking specific performance thereof (and also referred to by him in the suit seeking recovery by way of compensation and damages), was a forged document.

This amendment is sought after the respondent-plaintiff had already deposed by way of examination-in-chief in one case, and in the other even some witnesses are stated to have been cross-examined.

Other than that, it is seen that though in the original written statement filed in the suit for recovery, it has been averred "That plaintiff is property dealer by profession and is in habit of preparing such false and frivolous documents. Defendant worked as her employee for two years", however, she has not stated that he actually used to obtain her signatures on blank papers. (Reference paragraph 2 of the written statement, in which the amendment is sought to be incorporated).

15. Similarly, in the suit seeking specific performance of the agreement relied upon by the respondent-plaintiff, in the written statement filed by the petitioners, i.e. the written statement as is sought to be amended, in the same paragraph (no.2), in the reply on merits, the first part thereof

states that no agreement was entered into between the parties, after which she has also stated that “no such agreement to sell has ever been signed by the defendant no.1. The plaintiff is a property dealer by profession and is in habit of preparing such false and frivolous document.”

Thus, despite stating that no such agreement was signed by her, she had not stated (in the original written statement), that the plaintiff actually got blank papers signed from her.

Of course, one way of looking at the matter would be that if once the petitioner has taken a stand that the respondent plaintiff used to prepare false documents, the amendment now sought to be made is only an elaboration of that averment; however, in the opinion of this Court, it is not actually an elaboration but wholly a new stand to the effect that in the preparation of such false documents, he was in fact taking her signatures on blank papers. To repeat, this is despite the fact that her specific stand in paragraph 2 of her written statements was that the plaintiff was “On the habit of” preparing false documents and that she was his employee for two years.

To my mind, the addition sought to be made has come to the petitioners as an after thought, to try and strengthen their case after the trial had commenced, especially keeping in view the background of the litigation between the parties, where the petitioner had got registered a criminal case against the respondent-plaintiff and his associates, alleging that she had been gang raped by them; though eventually he was acquitted in that case, upon a statement made by the petitioner herein, i.e. defendant in the suit in the current *lis*. (The aforesaid reference is being taken by this Court from paragraph 1 of the written statement filed on behalf of both the petitioners to the suit seeking recovery by way of damages and compensation, a copy of

which is annexed as Annexure P-3 with CR no.58 of 2019).

Hence, there being a background to the current litigation, especially the suit of the respondent-plaintiff seeking damages, addition of an averment that he was getting blank papers signed by her, with that averment not having been made in the original written statement filed in both the cases, even though the petitioners had already taken a stand that he (respondent-plaintiff) was in the habit of preparing false papers or documents, it would be an addition seeking to strengthen the case after some part of the evidence had already been led by the respondent, which would not be permissible, in my opinion, especially in view of the specific bar contained in proviso to Rule 17 of Order 6 of the Code. The provision is reproduced herein:-

“17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

16. Undoubtedly, in some of the case law cited by the learned counsel, an amendment in the written statement after the trial had commenced had been permitted on the ground that the criterion for amendment of a written statement is not as stringent as for amendment of a plaint after the trial had commenced; but even so, in the opinion of this court, the statutory provision cannot be relaxed in the context of the facts and

circumstances of the present case.

17. This is opined to be further so as the petitioners even in their application filed under Order 6 Rule 17 of the Code, in both the suits, had simply stated that the averment now sought to be added, was not taken earlier “due to inadvertence”. In my opinion, the words 'inadvertence', and 'due diligence', are practically wholly 'opposite to each other'.

18. In the context of what 'due diligence' means, as postulated in the proviso, a judgment of the Supreme Court in **Chander Kanta Bansal v. Rajinder Singh Anand**, 2008 (2) RCR (Civil) 801 can be referred to, wherein their Lordships, after referring to the dictionary meaning of the word 'diligence', as also the meaning of the phrase 'due diligence', observed that it means such diligence as a prudent man would exercise in the context of his own affairs. It was further observed that:-

“It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial.”

In that case, the application for amendment had of course been made after about two decades, whereas in the present cases it was after about 2 years after the written statement was originally filed, in one case; and 1 year and 8 months in the other case. However, given the background of the fact that there was 'criminal litigation' between the parties, on various serious charges, with the petitioners admittedly having eventually made a statement in favour of the respondent-plaintiff, I find it difficult to accept that an amendment now sought to be made, adding a wholly new plea of specific attribution of blank papers having been got signed, is not wholly an after thought to further buttress the case of the petitioners-defendants.

19. Reference may also be made here to the judgments of the Supreme Court on an amendment sought after commencement of the trial not

being permissible, in Ajendraprasadji N. Pandey and another v. Swami Keshvprakeshasji N. and others, (2006) 12 SCC 1 and Vidyabai and others v. Padmalatha and another, 2009(1) RCR (Civil) 763 and Sushil Kumar Jain v. Manoj Kumar and another, 2009(3) RCR (Civil) 899.

Though the first case was one in which the application for amendment was filed about 18 years after the original written statement had been filed and even the witnesses had been examined, whereas in the present cases the amendment is sought about two years after the written statement was filed, as already said, yet what was observed on the principle of an amendment of the written statement after the trial had started, needs to be referred to, with their Lordships observed as follows:-

“43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (*sic* Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognising the power of the court to

grant amendment, however, with certain limitation which is contained in the new proviso added to the rule.”

In *Vidyabais'* case (supra), the application for amendment was made about two years and seven months after the written statement had been filed and the Supreme Court, after noticing the amendment made in Rule 17 of Order 6 (inserting the proviso to the Rule), held that the courts' jurisdiction to allow an application for amendment is taken away unless the conditions precedent are satisfied, i.e. it must come to a conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. (Reference paragraph 7 of the judgment, Law Finder Edition).

In *Sushil Kumars'* case (supra) undoubtedly it has been held that the principles governing amendment of a plaint and written statement are not the same and adding a new ground of defence or substituting or altering defence, “does not raise the same problem as adding, altering, substituting a new cause of action”.

Though that was the ratio of the judgment, however it was also observed while concluding it, that even the issues had not been framed in that case and consequently, the proviso to Rule 17 of Order 6 was not applicable.

20. In the present two cases this Court already having expressed its opinion that the amendments sought, though contended before this court to be only supplementing the stand already taken by the petitioners in the original written statement, but it actually being a wholly a new defence taken after some part of the evidence had been led by the respondent-plaintiff in one suit and even cross-examination conducted in the other, with no due diligence shown to be exercised by the petitioners, the trial court did not err

in passing the impugned order.

21. Consequently, in the light of the aforesaid reasoning, finding no merit in these petitions, they are dismissed *in limine*.

February 22, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |