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

**Civil Revision No.7490 of 2019 (O&M)
Date of Decision: 26.11.2019**

Bhupinder Singh

.....Petitioner

Vs

Pritpal Singh and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Anantdeep Singh Sandhu, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Challenge is made to the order dated 30.10.2019 passed by the Addl. Civil Judge (Sr. Divn.) Moga, vide which the application under Order 6 Rule 17 CPC filed by the respondent for amendment of the written statement was allowed.

[2]. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 25.05.2017 and in the alternative suit for recovery of Rs.23,55,000/- inclusive of penalty along with interest, with consequential relief of permanent injunction was also filed.

[3]. In the aforesaid suit, defendants filed an application for amendment in the written statement on the ground that that suit

filed by the plaintiff is based on the agreement to sell allegedly executed by the defendants which they have denied by questioning the execution and validity of the agreement to sell dated 25.05.2017. The defendants sought amendment in the written statement by proposing to add para No.4a. which is to the following effect:-

“4a. That present suit is result of collusion and concoction of plaintiff, Satnam Singh, M/s Aggarwal foods and its partner Kapil Kumar and Sukhdev Singh. In fact all these persons have made a gang to rob the defendants of their properties and also in order to pressurize them to admit the agreement of sale in the present case which is a forged and fabricated document. It is mentioned over here that another suit titled as “Satnam Singh vs Pritpal Singh” for recovery of Rs.20.00 lacs on the basis of agreement dated 09.12.2016 is also pending in the court of Ld. Civil Judge Moga. A complaint u/s 138 of NI Act titled as “M/s Aggarwal Foods vs Pritpal Singh” is also pending in the court of Mrs. Daljeet Kaur, PCS, Ld. JMIC Moga. Another suit titled “Sukhdev Singh vs Pritpal Singh” on the basis of agreement to sell dated 20.11.2017 is also pending in the court of Sh. Supinder Singh, PCS, Ld. Civil Judge (J.D.) Moga. It is also mentioned over here that all the plaintiffs of civil suits and complainant of complaint u/s 138 of NI Act and the marginal witnesses of the said forged documents on the basis of which above said cases have been filed, are hand in glove with each other. The above said plaintiffs are also the attesting witnesses of each other's documents and their sole motive is to grab property of defendants. The documents relied upon by the present plaintiff and

by others as mentioned above are forged and fabricated and have been so concocted in collusion with each other and with Kapil Kumar and others partners of M/s Aggarwal Foods.”

[4]. Defendants further pleaded that the proposed amendment will not change the nature of the case, rather the same would be a clarificatory in nature.

[5]. The trial Court after finding the proposed amendment to be bona fide accepted the application vide the impugned order by granting indulgence for amendment in the written statement on the ground that the proposed amendment is an elaboration of the stand already taken by the defendants in the written statement and the same is clarificatory in nature in furtherance of the original stand of denial taken by them in the written statement.

[6]. Learned counsel for the petitioner vehemently submitted that the plaintiff has already concluded his evidence and acceptance of the application for amendment of written statement would result in *de novo* trial as the plaintiff will have to lead evidence in rebuttal too on the evidence likely to be led by the defendants *qua* their amended stand.

[7]. I have considered the submissions made by learned counsel for the petitioner.

[8]. It is a settled principle of law that the defendants can

take inconsistent pleas by way of amendment in the written statement. *Bona fide* amendment can be allowed at any stage of the suit. The amendments which are necessary for determination of the real question in controversy can be allowed. The nature of amendment in the written statement is only just an elaboration of stand already taken by the defendants in the written statement and the same is only clarificatory in nature. The plaintiff would be within his right to cross-examine the witness of the defendants or may lead evidence in rebuttal at an appropriate stage.

[9]. It is a settled principle of law that amendment of the written statement has to be liberally construed and has to be treated on different pedestal than that of amendment of the plaint. In case of amendment of the written statement, the defendant is entitled to take inconsistent plea and in appropriate cases even the admission made on earlier occasion can be allowed to be withdrawn. The amendment of written statement stands on different pedestal and the Court is not obligated to go into the correctness and falsity of the case of the parties at this stage. It is mandatory on the part of the Court to allow all *bona fide* amendments which are necessary for real determination of the issues. 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. Each case has to be tested on the basis of its own merits. The correctness or falsity of the amendment cannot be commented upon at this stage. On the ground of elaboration of facts in support of earlier plea, written statement can be allowed to be amended. Reference can be made to **M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., 2001(4) R.C.R. (Civil) 362.**

[10]. 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.”

[11]. The ratio in ***Usha Balashaheb Swami & Ors'*** case (supra) was followed by this Court in ***Mohinder Singh & Anr. vs. Reshma Devi & Ors., 2017(3) Law Herald (P&H) 2234*** and ***M/s Vikram Electric Equipment Pvt. Ltd. vs. Chankya Education Society, 2017(3) Law Herald (P&H) 2433.***

[12]. The amendment in written statement which is sought to be incorporated in my considered opinion is the most innocuous pleading which does not tantamount to altering the nature of the plaint much less withdrawing any stand made in the earlier written statement, rather it would be an elaboration of the facts already pleaded in original written statement and the plaintiff would be at liberty to cross-examine the defendants. The amendment sought to be incorporated is only explanatory and the veracity of the correctness would be appreciated by the trial Court at the relevant stage. At this stage, the proposed amendment cannot be held to be *mala fide* by any stretch of imagination. The indulgence granted by the trial Court cannot be found to be illegal or perverse.

[13]. In view of aforesaid observation, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

November 26, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No