

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

-.-

CR-580-2019 (O&M)
Reserved on : 22.07.2022
Date of Decision : 04.08.2022

Harish Chander Alias Harish Bouri and Others

...Petitioners

versus

Rajesh Malhotra and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S.Sachdeva, Advocate for the petitioners.

Mr. Vaibhav Sehgal, Advocate for respondent No.1

ALKA SARIN, J.

The present civil revision under Article 227 of the Constitution of India has been filed challenging the order dated 16.10.2018 (Annexure P-1) whereby an application filed by the defendant-petitioners under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for amendment of the plaint has been dismissed. The petitioners are defendant Nos.1, 3, 4, 6, 7 and 8 before the Trial Court.

Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for possession by way of specific performance of the agreement to sell dated 06.10.2006 in respect of property bearing No.B-II-1457 measuring approximately 200 sq. yards situated at Deepak Cinema Road, Ludhiana as well as for mandatory injunction and permanent injunction. The defendants filed a written statement dated 10.09.2014 wherein the execution of

the agreement to sell was denied and it was stated in para 9 of the preliminary objections, as well as in the written statement on merits, that the alleged agreement to sell was a false, bogus and fabricated piece of document and the same did not bear the signatures of the defendants. The said written statement was signed by the defendant-petitioner No.1. A replication to the said written statement was filed by the plaintiff-respondent No.1. Issues were framed and after four witnesses of the plaintiff-respondent No.1 had been examined, an application (Annexure P-5) was filed on behalf of the defendant-petitioners under Order 6 Rule 16 CPC read with Order 6 Rule 17 CPC for amendment of the written statement. It was stated that though defendant-petitioner No.1 was a Solicitor by profession practicing in the UK, however, he was not aware about legal matters and procedures in India and hence he left everything to the counsel to provide with regard to the facts and subsequently it transpired that the counsel had committed a fraud with him. It was averred in the amendment application that a complaint was also filed with the Bar Council of Punjab and Haryana as well as with the Police against the counsel. By the amendments sought, the defendant-petitioners wanted to amend the preliminary objections so as to not deny the execution of the agreement; raising an objection regarding the suit having been filed against dead persons; raising an objection regarding non-joinder and misjoinder of parties; raising an objection that the plaintiff-respondent No.1 had not performed his part of the contract and that the agreement was cancelled on 31.05.2008. In the amendment sought to the written statement on merits, the defendant-petitioners wanted to inter-alia raise a plea that they had never executed the agreement to sell and it was a forged document since the witnesses had entered on it later on but even if was presumed that they had executed the agreement the same was not on proper

stamp paper and was not admissible in evidence. The amended written statement was intended to be on behalf of the defendant-petitioners only since defendant Nos.2 and 5 (respondent Nos.2 and 3 herein) were dead even prior to the filing of the suit.

The plaintiff-respondent No.1 filed a reply (Annexure P-6) contesting the amendment application averring that it had been moved at a belated stage and was time barred. It was also submitted that the amendment could not be allowed as trial of the suit had already commenced and further that the admissions made earlier were being sought to be withdrawn.

Vide impugned order dated 16.10.2018 the Trial Court dismissed the amendment application holding inter-alia that “.....*The applicants wants to take contradictory to their earlier pleadings through purposed amendment which is not permissible. The plaintiff has already recorded examination in chief of 4 witnesses in order to counter the pleading of applicants taken in their written statement. The provisions of order 6 rule 17 CPC permits a party to introduce subsequent facts or facts which are not earlier in their knowledge by way of amendment of their pleadings. A party cannot be allowed to take advantage of their negligence by moving application u/o 6 rule 17 CPC. The arguments raised by the counsel for the applicants is not sustainable that defendants no.1 did not knows the technicality of law in India when he has admitted the defendant no.1 is practicing as solicitor in England*”. The Trial Court also held that “*In the present case also the purposed amendment amounts to withdrawal of earlier admission made by the applicants*”.

Learned counsel for the defendant-petitioners would contend that the Trial Court has erred in dismissing the amendment application. According

to counsel, the amendments sought are only to explain the written statement which had been filed earlier by the defendant-petitioners and since earlier certain inconsistent pleas had been raised the amendments sought would only harmonize the pleas taken earlier by the defendant-petitioners. Learned counsel has further contended that by way of the present application, the defendant-petitioners also want to withdraw the statement denying the signatures on the agreement to sell and instead wish to incorporate that defendant-petitioner No.1 kept waiting for the plaintiff-respondent No.1 to bring the entire amount of the sale consideration, however he got an agreement drafted in Punjabi and since the defendant-petitioner No.1 did not know how to read and write Punjabi he signed the agreement and a sum of Rs.5000/- was received in cash and Rs.45,000/- was received by way of cheque. However, no witness was present at that point of time and that the last date for execution of the sale deed was fixed for 07.04.2007.

Learned counsel for the petitioners would also contend that there are certain amendments sought with the regard to the fact that the suit had been filed against dead persons and also raise an objection regarding non-joinder of parties. Reliance has been placed upon judgments in the cases of **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons &Ors. [2010 (1) RCR (Civil) 27]**; **Sushil Kumar Jain Vs. Manoj Kumar &Anr.[2009 (3) RCR (Civil) 899]**; **Baldev Singh &Ors. Vs. Manohar Singh and Anr. [2006 (3) RCR (Civil) 844]**; **Usha Balashaheb Swami &Ors. Vs. Kiran Appaso Swami &Ors. [2007(2) RCR (Civil) 830]** and **Andhra Bank Vs. ABN Amro Bank N.V &Ors. [2007 (3) RCR (Civil) 585]**.

Per contra, learned counsel for the plaintiff-respondent No.1 has contended that by way of the amendments sought the defendant-petitioners

want to completely change the stand taken by them in the written statement dated 10.09.2014 which cannot be permitted in law. While earlier the agreement to sell was specifically denied and so were the signatures on it and it was stated that the agreement was forged and fabricated, now the defendant-petitioners want to admit the agreement to sell. It is the further contention that the amendment is being sought only in view of the fact that the defendant-petitioners realized that having denied the agreement to sell they would not be in position to raise the plea of readiness and willingness on the part of the plaintiff-respondent No.1. Learned counsel would further contend that the entire blame has been put on the counsel and as per the judgments of this Court in **Mukesh Kumar Vs. Sushil Mittal &Ors. [2013(1) Civil Court Cases 211]**, **Sunil &Ors. Vs. Jai Prakash &Anr. [2013(2) Civil Court Cases 105]**, **Vijay Vs. Laxman & and Another [2013(2) Civil Court Cases 107]**, **Ajmer Singh Vs.Girdhala&Ors. [2014(3) Civil Court Cases 056]**,**Mohar Pal Vs. Smt. Sunehra [2002(2) RCR (Civil) 767]**; and judgment of Bombay High Court in the case of **Conception Fernandes &Anr. Vs. Tasneem Shaikh&Ors. [2014(4) Civil Court Cases 332]**,judgment of Delhi High Court in the case of **Subhash Chand Sethi Vs. J.K.Jain [2016(2) Civil Court Cases 058]** and judgment of Madhya Pradesh High Court in the case of **Narendra Vs. Santosh Kumar [2018(1) MPWN 302]**,amendment cannot be allowed solely on the said ground. It is further argued that even the new counsel engaged by the defendant-petitioners in the cross-examination of PW4, the handwriting expert, has specifically put a suggestion that the signatures on the agreement to sell were forged. Learned counsel has further referred to the proviso of Order 6 Rule 17 CPC to contend that amendment cannot be allowed post the commencement of the trial. In support of this argument he has relied

upon the case of **Vidyabai&Ors. Vs. Padmalatha&Anr. [2009(1) RCR (Civil) 763]**. Learned counsel further contends that the amended written statement would amount to a complete withdrawal of the admission made by the defendant-petitioners which cannot be permitted in law. In support of his argument reliance has been placed upon the decisions by the Supreme Court in the cases of **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria&Ors. [2015(4) RCR (Civil) 580 (para 24)]**, **M/s Modi Spinning & Weaving Mills Co. Ltd. &Anr. Vs. M/s Latha Ram & Co. [1976(4) SCC 320]** and **Gautam Sarup Vs. Leela Jetly&Ors. [2008(7) SCC 85]**.

Heard.

In the original written statement dated 10.09.2014 the defendant-petitioners had denied the execution of the agreement to sell. The receipt of any earnest money by cash and cheque was also denied. This denial is seen in several paragraphs of the said written statement. Based upon the averments made in the plaint and the original written statement dated 10.09.2014 the Trial Court framed the following issues on 15.07.2017 :

1. Whether the plaintiff is entitled for possession on the basis of specific performance of agreement to sell dated 06.10.06, as prayed for ? OPP
2. Whether the plaintiff is entitled for relief of mandatory injunction ? OPP
3. Whether the plaintiff is entitled for relief of permanent injunction ? OPP
4. Whether the plaintiff is entitled for relief of mandatory injunction ? OPP

5. Whether suit is not properly valued for purpose of court fee and jurisdiction ? OPD
6. Whether suit is not maintainable for want of locus standi & cause of action ? OPD
7. Whether suit is time barred ? OPD
8. Whether suit is false and frivolous to the knowledge of plaintiff ? OPD
9. Relief.

Base upon the issues framed, the plaintiff-respondent No.1 started leading the evidence. While the evidence of the plaintiff-respondent No.1 was being recorded, on 17.04.2018 the defendant-petitioners moved the application for amendment of the written statement seeking the following amendments while stating in the application as as under :

“6. ...It appears that the proper facts could not be mentioned at the time of filing of the written statement, so, in order to explain the same in detail, the proposed amendment is necessitated. Even otherwise, as per the provisions of Order 6 Rule 16 CPC, the pleadings which are unnecessary, scandalous, frivolous or vexatious can be struck off at any stage so by way of this application, the following pleadings which are liable to be struck off under Order 6 Rule 16 CPC are being struck off and detailed pleadings under Order 6 Rule 17 CPC which are liable to be amended and explained, are being sought to be amended as follows :

- a) *That para No.9 of the preliminary objections in the*

existing written statement is liable to be struck off from the written statement as it is contrary to the general pleadings of the defendants/applicants and accordingly, after striking off the present preliminary objection No.9, the following para is liable to be inserted as Preliminary Objection No.9:

“That the defendant No.1 was litigating with the plaintiff pertaining to the fact he wanted the property to be vacated and even filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act. During the pendency of the said ejectment petition, the plaintiff approached the defendant No.1 to sell off the property to him. As the defendant No.1 was frustrated with the litigation being contested in India, so he agreed to the proposal of the plaintiff and had accordingly handed over copy of the Power of Attorney to the plaintiff who intentionally had stated that he would pay the entire amount of Rs.15,00,000/- which was agreed to be settled on 06.10.2006. The defendant No.1 was waiting for the plaintiff to bring the entire amount so that the sale deed could be executed but instead of bringing the amount, he brought an agreement, drafted in Punjabi. It is to be mentioned herein that the defendant No.1 was never in knowledge as to how to read and write Punjabi as he had been living in U.K. By filling the blanks in the

said agreement by hand, the defendant No.1 was made to sign the agreement and a sum of Rs.5,000/- in cash and Rs.45,000/- by way of cheque was given to the defendant No.1. At that time, no witness was present nor any such witness had signed in the presence of defendant No.1. The plaintiff was given the copy of Power of Attorney and he had himself drafted the agreement on the basis of power of attorney and last date for execution of the sale deed was told to be 07.04.2007. It was told by the plaintiff that he would inform the defendant No.1 as and when he has the balance sale consideration and accordingly, the defendant No.1 would come to India for the purpose of execution and registration of the sale deed. However, the plaintiff never told the defendant No.1 that he had the balance sale consideration with him.

That in the month of March, 2008 when the defendant No.1 came to India, he was having general Power of Attorney with him and at that stage, the plaintiff had approached the defendant No.1 and told him that he could not arrange the balance sale consideration on 07.04.2007, so the sale deed could not be executed. The defendant No.1 told the plaintiff that his earnest money has been forfeited but on the request of the plaintiff and with an idea to buy peace

and to avoid litigation, it was asked to write endorsement to incorporate the date of registration of the sale deed till 31.05.2008. It was told by the plaintiff to the defendant No.1 that he would arrange the money by that time. Accordingly, as per the asking of the plaintiff, an endorsement was made on the original agreement on 12.03.2008 by the defendant No.1 and the last date for registration of the sale deed was extended uptill 31.05.2008. The plaintiff had categorically stated at that time, that he would inform the defendant No.1 as and when the entire balance sale consideration is ready with him and accordingly, the defendant No.1 would come to India. One week prior to 31.05.2008, the defendant No.1 talked with the plaintiff and the plaintiff told the defendant No.1 that he does not have balance sale consideration, so there is no need for the defendant No.1 to come to India. The plaintiff further stated that he cannot perform his part of agreement and as per the law, the agreement is deemed to be cancelled if not extended on 31.05.2008. The defendant No.1 accordingly thought that as the amount of Rs.50,000/- which has been paid, is considered to be forfeited and the agreement is deemed to be cancelled because the plaintiff did not perform his part of contract, hence the defendant No.1 did not come to India. Defendant

No.1 in order to fulfill his part of contract, had even withdrawn the litigation of ejectment which was filed by him against the plaintiff. The defendant No.1 was shocked to receive the summons from the Court pertaining to the present litigation which was filed by the plaintiff on 15.10.2013 i.e. much after the period of limitation and immediately thereafter, the defendant No.1 came to India and contacted his advocate who contested the litigation and filed written statement. It appears that the proper instructions were not taken by the counsel, Sh. Raju Arora, Advocate and he had filed written statement on behalf of all the defendants before the Hon'ble Court. It is to be mentioned herein that much prior to the filing of the present suit, the defendant No.2 Smt. Lachhmi Devi Bouri and defendant No.5, Smt. Sushila Kumari had already expired and even the legal heirs of Sh. Balraj Kumar who is co-owner in the property in question, have not been made a party to the present suit.

It is further to be mentioned herein that the suit is barred by limitation and even otherwise, cannot be specifically performed because admittedly, the legal heirs of Shri Balraj Kumar and Sushila Kumari have not been made as party who are the co-owners in the property in dispute.”

b) That the defendants/applicants want to add the following objections in the written statement by way of legal objections as preliminary objection No.11:

“11. That the suit has been filed by the plaintiff against the dead person i.e. defendant No.2 and 5 who were already dead much prior to the filing of the present suit, so on this score also, the present suit is liable to be dismissed with costs.”

c) That similarly, the defendants/applicants also want to incorporate the following para as preliminary objections No.12 in the written statement:

“12. That the suit is bad for mis-joinder and non-joinder of necessary parties because admittedly, the property was initially owned by Shri Om Parkash who had died intestate and after his death, the property was inherited by Harish Chander alias Harish Bouri, Lachhmi Devi Bouri, Usha Kumari, Krishna Kumari, Sushila Kumari, Balraj Kumar, Subhash Chander, Jatinder Kumar and Ramesh Chander. Even Lachhmi Devi has now expired. Sushila Kumari has also expired. After the death of Shri Om Parkash, legal heirs of Smt. Sushila Kumari have not been made a party to the present suit who are co-owners in the property in question. Similarly Balraj Kumar, another son of Shri Om Parkash has also expired and his legal heirs have not been made

as party to the present suit who are also the co-owners in the property in question. Thus, the suit cannot be decreed and the alleged agreement cannot be specifically performed.”

d) That similarly, the defendants/applicants also want to incorporate the following para as Preliminary objection No.13 in the written statement:

“13. That as per the law, no rectification can be made in the alleged agreement to sell more particularly after the period of about 12 years when the said fact or mistake if any, was in knowledge of the plaintiff and was done at his own behest as already mentioned hereinabove, the defendant No.1 was not knowing Punjabi so the entire draft of the agreement was made by the plaintiff and he had never read over the said agreement to the defendant No.1. The defendant No.1 initially had given a reply that the agreement is forged and fabricated only on the ground that no witness was present when he had signed the agreement, so on this score also, this suit is liable to be dismissed with costs.”

e) That similarly, the defendant/applicants also want to incorporate the following para as preliminary objections No.14 in the written statement:

“14. That the plaintiff has not performed his part of contract so the suit as such, is not maintainable more

particularly because the agreement was cancelled on 31.05.2008 when the plaintiff was not having balance sale consideration and he himself had informed the defendant No.1 telephonically to the effect that he was not having balance sale consideration and necessary expenses and the agreement was deemed to be canceled. Once he had informed the defendant No.1 telephonically that he does not have money to fulfill his part of agreement, the alleged agreement to sell stands cancelled and the earnest money was forfeited. Even otherwise, there was no agreement pertaining to the property in question between the legal heirs of Smt. Sushila Kumari and Shri Balraj Kumar.”

f) That in para No.1 of the reply on merits, the words “and the defendant No.1 is a attorney holder of defendant Nos.2 to 8” in the existing written statement, are liable to be replaced with the following words:

“and the defendant No.1 is filing written statement on his own behalf and on behalf of defendants No.3,4,6,7 and 8 because admittedly, the defendants No.2 and 5 are already dead and the suit has been filed against the dead persons.”

g) That similarly, in the middle of para No.2 of the written statements on merits the words “In fact, no such alleged agreement to sell was ever execute between the plaintiff and defendants and the so called ATS is forged,

procured and bogus document. Moreover, if for the sake of arguments, even if it is assume that any alleged agreement took place, the same has not been drawn on a proper stamp paper” are liable to be replaced with the following words:

“In fact, no such agreement, as alleged had ever been executed. Rather, the detailed facts have been given in the preliminary objections with regard to the agreement to sell which may be read as part of reply to this para of the plaint. As the witnesses have been entered in agreement to sell lateron, so it is to be presumed that the agreement to sell is forged and fabricated and it is a bogus document. However, if for the sake of arguments, even if it is presumed that any such agreement has been entered into, the same has not been executed on a proper stamp paper and is not admissible in evidence.”

h) That similarly, in para No.3 of the written statement on merits the words “In fact, no such alleged agreement to sell was ever execute between the plaintiff and defendants and the so called ATS is forged, procured and bogus document. Moreover, if for the sake of arguments, even if it is assume that any alleged agreement took place, the same has not been drawn on a proper stamp paper”, are liable to be replaced with the following words:

“In fact, no such agreement, as alleged had ever been

executed. Rather, the detailed facts have been given in the preliminary objections with regard to the agreement to sell which may be read as part of reply to this para of the plaint. As the witnesses have been entered in agreement to sell lateron, so it is to be presumed that the agreement to sell is forged and fabricated and it is a bogus document. However, if for the sake of arguments, even if it is presumed that any such agreement has been entered into, the same has not been executed on a proper stamp paper and is not admissible in evidence.”

i) That similarly, the words contained in the last five lines at the end of para No.4 of the written statement on merits i.e. “In fact, no such alleged agreement to sell was ever execute between the plaintiff and defendants and the so called ATS is forged, procured and bogus document. Kindly read the objections as well as reply of para 2 & 3 as integral part and parcel with this paragraph”, are liable to be replaced with the following words:

“No such agreement was ever executed. Rather the agreement has been created lateron by putting the witness and thus the agreement is to be presumed as forged and bogus document and even otherwise, there was no averment in the agreement that TS-I form has to be appended by the replying defendants. TS-I form is not a document of title and is not required for the

purpose of registration of the sale deed nor any such fact has been mentioned in the original agreement. Detailed facts have already been mentioned in the preliminary objections and hereinbefore, which may be read as part of reply to this para of the plaint.”

j) That similarly, in para No.6 of the written statement on merits, the following lines are liable to be incorporated at the end:

“The plaintiff has come to the court with unclean hands and has not laid the true and correct facts before this Hon’ble Court. Rather, he has been sleeping over the agreement for a period of about 07 years. The plaintiff never had the balance sale consideration with him during the said time and rather had himself stated one week prior to 31.05.2008, telephonically to the defendant No.1 that he cannot specifically perform the agreement to sell and the agreement is deemed to be cancelled and the amount has to be forfeited. As per the law, without seeking declaration, suit for specific performance cannot be filed. Even otherwise, detailed facts have already been mentioned in the preliminary objections and hereinbefore, which may be read as part of reply to this para of the plaint.”

k) That similarly, in para No.9 of the written statement on merits the following lines are liable to be incorporated

at the end:

“There was no need for incorporation of the names of the defendants in the Municipal records and even otherwise, there was no averment to this effect in the agreement. So on this score also, the present suit is liable to be dismissed with special and compensatory costs.”

Learned counsel for the defendant-petitioners has contended that the amendments to the written statement sought do not make out a new case but rather the same are only for the purpose of explanation of facts and to take legal objections. However, this Court is unable to accept this reasoning being given on behalf of the defendant-petitioners. A comparison of the averments made in the original written statement dated 10.09.2014 and the averments now being sought to be made by way of amendment leave no manner of doubt that a completely opposite stand is being sought to be taken by the defendant-petitioners. While in the original written statement dated 10.09.2014 the defendant-petitioners had taken a plea of complete denial regarding execution of any agreement to sell, by way of the amendment they are now wanting to admit it's execution and explain the circumstances leading to it's execution. Permitting the amendments qua the execution of the agreement to sell would not only prejudice the rights of the plaintiff-respondent No.1 but would also require re-casting of issues and leading of fresh evidence. This would be nothing but allowing a de-novo trial which cannot be allowed in the garb of an amendment to the pleadings. The agreement to sell as well as their signatures on the agreement to sell were denied by the defendant-petitioners in the original written statement. By way of the present amendment the defendant-

petitioners want to do a complete U-turn by now admitting the agreement to sell as well as the signatures on the said agreement. The argument raised by the learned counsel that by way of the amendment only the pleas already taken are being sought to be harmonized cannot also be accepted. The counsel now appearing for the defendant-petitioners while cross-examining the handwriting expert of the plaintiff-respondent No.1 had specifically put a suggestion that the signatures on the agreement to sell were forged. The stand of the defendant-petitioners has through-out been that the agreement to sell was forged and fabricated and the signatures were not that of the defendant-petitioners.

The judgment relied upon by the learned counsel for the defendant-petitioners in the case of **Revajeetu Builders** (*supra*) to contend that Courts are more liberal in allowing an amendment to the written statement would not be of any help to the learned counsel. In the present case the injustice caused to the plaintiff-respondent No.1 by permitting the amendments cannot be compensated by way of costs. As per the settled law, if a defendant takes a stand that the agreement is forged and fabricated, he cannot raise a plea that the plaintiff is not ready and willing to perform his part of the contract. In the present case having raised a plea of the agreement being forged and fabricated and not signed by the defendant-petitioners, the amendments sought now would virtually change the entire written statement and the stand taken by the defendant-petitioners in the original written statement and this would cause great injustice to the plaintiff-respondent No.1. It is not that the amendment is being sought on the ground that certain facts which were necessary were omitted or that certain facts could not be mentioned in the original written statement. It is a case where the defendant-petitioners knowing the facts now wish to change their entire stand from the agreement to sell being forged and

fabricated and not signed by them to admitting the agreement to sell as well as their signatures on the same. In case of **Revajeetu Builders** (*supra*) the Supreme Court summarized the factors to be considered while dealing with an application for amendment as under:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under

Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.”

In the present case it cannot be lost sight that the defendant-petitioner No.1 is not an uneducated or rustic individual not knowing the intricacies of the law. He is a qualified Solicitor practicing in the United Kingdom and it cannot lie in the mouth of the defendant-petitioners to state that the defendant-petitioner No.1 was not aware of the facts or the law. It is not a case where a law point has wrongly been raised in the written statement. It is a case of a clear reversal of stand on the merits of the case. It is apt to note that the original written statement is duly signed by the defendant-petitioner No.1. It is not the case of defendant-petitioner No.1 that he had not read the contents of the original written statement before signing the same. Being an educated person having appended his signatures to the written statement, the defendant-petitioners cannot now be allowed to change the very nature of the stand taken by them in the written statement.

In the case of **Sushil Kumar Jain** (supra), it was held by the Lordships of the Apex Court that an admission made by a defendant in his written statement can be explained by filing an application for amendment of the same. The Apex Court observed that the appellant can be permitted to elaborate and clarify the earlier inadvertence and confusion made in his written statement, however, it does not mean that the appellant can be permitted to change the stand which he had taken in written statement before the Trial Court. As such, this Court is of the considered view that the said judgment is of

no assistance to the defendant-petitioners. The amendments sought in the present case are not explaining the admissions made rather by way of the amendment the entire written statement is sought to be changed. The judgement in **Sushil Kumar Jain's** case (*supra*) was also pressed into service in **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria [(2015) 10 SCC 203]** wherein it was held that “*We agree with the position in Nagindas Ramdas [(1974) 1 SCC 242] and as endorsed in Gautam Sarup [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85] that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava [Panchdeo Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594], does not reflect the correct legal position and it is overruled*”. It was further held that “*We agree with the position in Nagindas Ramdas [(1974) 1 SCC 242] and as endorsed in Gautam Sarup [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85] that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava [Panchdeo Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594] , does not reflect the correct legal position and it is overruled*”.

The judgments relied upon by the counsel for the defendant-petitioners in the cases of **Baldev Singh** (*supra*) and **Usha Balashaheb** (*supra*) pertain to raising inconsistent pleas while seeking amendment to the written statement. In the present case the defendant-petitioners by way of the amendment want to change their entire stand taken in the original written statement that the agreement to sell was forged and fabricated and not signed

by them, which cannot be permitted in law by seeking amendment of the written statement. This is not raising an inconsistent plea but raising an opposite plea and withdrawing an admission made. There is no quarrel with the proposition of law as laid down in the **Andhra Bank** case (*supra*) that delay is no ground for not allowing the prayer for amendment of the written statement and that while allowing an application for amendment of the pleadings the Court cannot go into the question of merit of such amendment. However, in the present case it is not a question of delay rather the question here is of wanting to take a complete U-turn and to virtually replace the original written statement filed by the defendant-petitioners.

The suit is based upon an agreement to sell and the defendant-petitioners ought to have been vigilant to take immediate steps to amend their pleadings once they discovered that the original written statement (in English language) did not convey the correct facts. The defendant-petitioners have tried to put the blame on their earlier counsel by pleading fraud being committed by him, but it is to be borne in mind that it is only the party which is privy to facts and can get the correct facts recorded in the pleadings. The counsel has not been able to justify the lethargy by the defendant-petitioners, which includes a Solicitor practicing in the United Kingdom. On a pointed query as to the nature of the fraud committed by the earlier counsel, the learned counsel for the defendant-petitioners has pointed out that the fraud committed was with regard to the misappropriation of the court fees. Merely putting the blame on the earlier counsel in the pleading of facts is not sufficient and cannot be accepted as a ground for seeking amendment of pleadings at a stage after commencement of the trial.

Further, the amendment in the written statement being sought to

plead that the suit had been filed against dead persons and also raise an objection regarding non-joinder of parties cannot be accepted. The defendant-petitioner No.1 who signed the original written statement did so while pleading in para 1 of the reply on merits that "*the defendant no.1 is a attorney holder of defendant no.2 to 8*". Defendant No.2 is the mother of defendant-petitioner No.1 while defendant No.5 is the sister of defendant-petitioner No.1. If the said defendant Nos.2 and 5 were dead much before filing of the suit, as averred in the amendment application, it is not comprehensible as to how the defendant-petitioner No.1 could continue to act as their attorney and sign the original written statement on their behalf. It cannot be believed that the defendant-petitioner No.1, a Solicitor, was unaware about the death of his own mother and own sister before signing the original written statement dated 10.09.2014. He would also have been aware about the death of his own brother Balraj whom it is claimed was a co-owner and was dead before filing of the suit and his heirs were not impleaded as a party to the suit. Clearly, the defendant-petitioners have been lax in pleading their defence and are now seeking the amendments only to circumvent the admissions already made and to undo certain illegal acts. This Court cannot help but comment that the defendant-petitioners have themselves also impleaded the long dead co-defendants (defendant Nos.2 and 5) as parties in this revision petition (proforma respondent Nos.2 and 3) without taking any steps to implead their heirs and legal representatives.

In view of the discussion above this Court finds no infirmity in the impugned order dated 16.10.2018 passed by the Trial Court. There is no merit in the revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off. Nothing mentioned in this order shall have any

bearing on the merits of the main suit.

04.08.2022
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO