

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

CR-2927-2022 (O&M)
Reserved on : 27.10.2022
Date of Decision: 01.11.2022

Krishan

....Petitioner

VERSUS

Rajpal Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sansar Kundu, Advocate for the petitioner.

Mr. R.N. Lohan, Advocate for the respondent.

ALKA SARIN, J.

The present civil revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 07.09.2021 passed by the Trial Court whereby the application filed by the defendant-petitioner for amendment of the written statement has been dismissed.

Learned counsel for the defendant-petitioner would contend that the defendant-petitioner wanted to add a paragraph to his written statement which paragraph reads as under :

“Prior to the agreement in question the defendant entered into an agreement to sell regarding the suit land with Mahabir son of Ram Narain r/o H. No.1517 Urban Estate, Jind on 18.11.2014 which was got entered in the register of Notary Public Distt. Courts, Jind. The

plaintiff has concealed that agreement from this Hon'ble Court as it was in possession of Mahabir and plaintiff himself. The plaintiff in connivance with Mahavir has played fraud with the defendant. The plaintiff along with Mahabir and Ramesh Kundu has played a fraud with the defendant and this agreement is a part of fraud play by the defendant his men."

It is further the contention of learned counsel that the question qua the said earlier agreement was already put to Mahabir, who admitted the execution of the said agreement. Learned counsel for the defendant-petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. [Civil Appeal No.5909 of 2022 (Arising out of SLP(C) No. 22443 of 2019) decided on 01.09.2022]**.

Per contra, learned counsel for the plaintiff-respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & Ors. [2013 (2) RCR (Civil) 965 (SC)]**.

Heard.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for specific performance of the contract dated 15.07.2016 alleged to have been executed by the defendant-petitioner in favour of the plaintiff-respondent and further directing the defendant-petitioner to execute the sale deed in favour of the plaintiff-respondent. The suit was contested by the defendant-petitioner who filed his written statement. After the plaintiff-respondent had led his evidence, an application

under Order 6 Rule 17 CPC was filed for amendment of the written statement to add the plea that prior to the agreement involved in the present case, the defendant-petitioner entered into an agreement to sell regarding the suit land with Mahabir and that the plaintiff-respondent in connivance with Mahabir had played a fraud with the defendant-petitioner and that the present agreement was a part of the said fraud. The application was contested by the plaintiff-respondent on the ground that the evidence of the plaintiff-respondent was closed on 06.02.2018 and that thereafter, instead of leading the evidence, the present application for amendment of the written statement had been filed. Vide the impugned order, the amendment application has been dismissed.

Learned counsel for the plaintiff-respondent has not been able to deny the fact that in cross-examination Mahabir has admitted that prior to the agreement to sell in the present case, an agreement had been entered into with him by the plaintiff-respondent. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India** (*supra*) has held as under :

“70.

(ii) *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*

(iii) *The prayer for amendment is to be allowed*

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal

especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.”

In the present case the amendment would be necessary to do complete justice between the parties and the same is not likely to cause any prejudice to the plaintiff-respondent. The judgment relied upon by learned counsel for the plaintiff-respondent in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit** (*supra*) does not pertain to the amendment of a written statement and is distinguishable on facts.

In view of the above and keeping in view the fact that no prejudice would be caused to the plaintiff-respondent, the present revision petition is allowed. The impugned order is set aside. The application for amendment of the written statement shall accordingly stand allowed subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. Pending applications, if any, also stand disposed off.

01.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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