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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-2262-2018 (O&M)

Reserved on : 30.05.2023

Date of Decision : 04.07.2023

Satnam Singh

....Petitioner

VERSUS

Kuldip Singh & Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Vijay Lath, Advocate for the petitioner.

Mr. Rishu Mahajan, Advocate for respondent No.1.

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**ALKA SARIN, J.**

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the defendant-petitioner challenging the order dated 06.03.2018 whereby an application filed by him under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the written statement has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for recovery of Rs.39,70,000/- along with interest against the defendant-petitioner and another. It was averred that the plaintiff-respondents had been selling their agricultural produce to the defendants who were commission agents and the parties had known each other for some time. In November 2010 the plaintiff-respondents obtained a

loan of Rs.50,00,000/- from the Oriental Bank of Commerce for which the defendants stood as guarantors. It was stated that since the defendants had stood as guarantors, they asked the plaintiff-respondents for the passbook and cheque book of the account in which the loan amount had been credited. Since the plaintiff-respondents knew the defendants who had stood as guarantors, they handed over the passbook and cheque book to the defendants and also signed four blank cheques. According to the plaintiff-respondents the defendants used three of the signed cheques and withdrew Rs.39,70,000/- from their account without their knowledge. The plaintiff-respondents confronted the defendants about the unauthorized withdrawal but got no satisfactory answer from the defendants. The plaintiff-respondents lodged a FIR on 19.08.2011 against the defendants. Hence, the suit for recovery of Rs.39,70,000/- with interest was filed against the defendants. A written statement was filed on behalf of the defendants raising several preliminary objections. On merits it was denied that the plaintiff-respondents had ever handed over the passbook and cheque book or signed cheques to the defendants. It was submitted that the plaintiff-respondents borrowed huge sums of money at different points in time from the defendants and to repay the same they handed over three cheques for Rs.39,70,000/- to the defendants and that even after deducting the said amount certain amount was still due by the plaintiff-respondents. According to the defendants they had also lodged a FIR against the plaintiff-respondents on 03.03.2012.

3. On 08.04.2016 the Trial Court framed the issues. Issue No.1 reads as under :

“1. Whether the plaintiff is entitled for recovery of Rs.39,70,000/- as prayed for ? OPP”

On 19.04.2017 the evidence of the plaintiff-respondents was closed and the suit was adjourned for the evidence of the defendants.

4. On 21.08.2017, when the suit was fixed for the evidence of the defendants, an application under Order 6 Rule 17 read with Section 151 CPC was filed for amendment of the written statement. According to the defendants, during investigation in the FIR dated 19.08.2011 lodged by the plaintiff-respondents the Police had taken in possession all the documents and ledgers and as such when the written statement was filed the defendants could not clarify/elucidate each and every entry and the settlement of accounts. As per the defendants the said accounts were lying in the Court of the JMIC and the defendants had copies of the same. Based on these accounts and ledgers the defendants wanted to amend para 3 of their written statement to mention in detail the amounts borrowed by the plaintiff-respondents and the settlement of the account on 30.11.2010. The plaintiff-respondents contested the said amendment application and filed a reply. Vide the impugned order, the Trial Court dismissed the amendment application. Hence, the present revision petition.

5. Learned counsel for the defendant-petitioner would contend that the amendment sought is only clarificatory and only the details of the financial dealings between the parties are being sought to be given. It is further the contention that the said amendment would not change the nature of the defence as in the original written statement it has been mentioned that the plaintiff-respondents had borrowed certain amounts from the defendants

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and to clear the same the three cheques had been issued and that no new plea was being raised by the amendment. Reliance has been placed upon a decision by the Supreme Court in the cases of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.** [2023 (1) RCR Civil 851], **Baldev Singh & Ors. vs. Manohar Singh & Anr.** [2006 (3) RCR Civil 844], **Mahila Ramkali Devi & Ors. vs. Nandram (D) thr LRs & Ors.** [2015 (5) RCR Civil 562], **Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.** [2010 (1) RCR Civil 27], **Abdul Rehman & Anr. vs. Mohd. Ruldu & Ors.** [2012 (4) RCR Civil 481] and the decisions by this Court in **Neetu Goel vs. Yogesh Goel** [2013 (1) RCR Civil 667], **Mahipal & Anr. vs. Sohan Devi & Ors.** [2016 (2) LAR 629] and **Aadish Aggarwal & Anr. vs. Brijeshwar Swaroop & Anr.** [2018 (1) RCR Civil 33]

6. Per contra learned counsel for the plaintiff-respondents has vehemently contended that the amendment if allowed would lead to a de-novo trial as the plaintiff-respondents would file a replication and the Trial Court may frame additional issues which would result in fresh evidence being led. According to counsel the suit was pending since 2013 and the amendment application was nothing but delaying tactics adopted by the defendants. It is contended that the amendment ought not to be allowed after commencement of the Trial. He has relied upon the decisions in the cases of **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors.** [2007 (1) RCR Civil 481] and **Parbhati Lal vs. Dalip Singh & Anr.** [2012 (4) RCR Civil 1007].

7. I have heard the learned counsel for the parties.

8. The defendant-petitioner in para 3 of the original written statement has inter-alia stated that “... *Not only this, from year 1992 onwards till 2010 the plaintiffs use to borrow and repay the amount to the defendants by selling their crops. It is specifically submitted here that the marriage of the daughter of the plaintiff no.1 was to be solemnized in the year of 2010 and the plaintiff no.1 borrowed huge amount from the defendants and also agreed to repay the same in the year of 2010 itself. It is further submitted here that as the plaintiffs promised to repay the amount for said purpose, the plaintiff handed over the three cheques for a sum of Rs.39,70,000/- to the defendants. It is also submitted here that after deducting the said amount from the accounts of the plaintiffs, there is still amount standing in the name of plaintiffs*”. By way of the amendment the defendant-petitioner wants to add to the existing para 3 so as to give a narration about the borrowing and lending between the parties and settlement of accounts on 30.11.2010 and the issuance of the three cheques by the defendants to discharge their liability.

9. The suit was filed by the plaintiff-respondents in 2013 and is still pending. The evidence of the plaintiff-respondents was closed on 19.04.2017. Thereafter, the defendants led their evidence which was closed on 07.04.2022. The suit is now for rebuttal evidence. The Supreme Court in the case of **Life Insurance Corporation of India** (supra) has inter-alia held as under :

“70. *Our final conclusions may be summed up thus:*

(i) *Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for*

*application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.*

*(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 mala fide, 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.*

*(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the*

*amendment is liable to be allowed even after expiry of limitation.*

*(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

*(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

*(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does*

*not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”*

10. The amendment sought by the defendant-petitioner does not amount to withdrawing any admission made in the original written statement. Rather, the amendment shall assist the Court in the effective and proper adjudication of the controversy between the parties. No new claim is being raised by the defendants by amendment of the written statement. No right has accrued in favour of the plaintiff-respondents by the defendants not taking the pleas now sought to be introduced at an earlier stage. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defense taken. The defendants have also given cogent reasons for not taking the pleas earlier since the record, including ledgers, were with the Police who were investigating a FIR

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lodged prior to the filing of the suit. The test of due diligence has been cleared in the present case. This is all the more so since what is being sought to be stated by the amendment is only an elaboration of the facts already stated and thus amplification of the defence by the defendants. There is no dispute regarding ratio of the law laid down in the case **Ajendraprasadji N. Pande** (supra) referred to by the counsel for the plaintiff-respondents but since this Court has arrived at a conclusion that for the purpose of determining the real question in controversy between the parties the amendment is necessary, the amendment to the written statement sought by the defendants can be permitted.

11. In view of the discussion above the present revision petition is allowed and the impugned order dated 06.03.2018 is set aside and the amendment application dated 21.08.2017 filed by the defendants is allowed subject to payment of Rs.50,000/- as costs to the plaintiff-respondents which shall be shared by them equally. Pending applications, if any, also stand disposed off.

12. It is made clear that any observation made herein-above shall not be treated as an expression of any opinion on the merits of the case.

04.07.2023

Yogesh Sharma

(ALKA SARIN)

JUDGE

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