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

**CR-3416-2019 (O&M)
Reserved on : 25.01.2023
Date of decision : 03.02.2023**

Sanjeev Sharma

.....Petitioner

Versus

Anil Kumar

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Shubreet Kaur, Advocate for the petitioner.

Mr. Shehbaz Thind, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the impugned order dated 14.03.2019 (Annexure P-7) passed by the Trial Court vide which the application filed by the defendant-respondent for amendment of his written statement has been allowed.

The defendant-respondent during the pendency of the suit and while his evidence was still going on, filed an application for amendment of the written statement to incorporate certain averment about the plaintiff-petitioner being a member of a group of land grabbers and also to bring on record some judicial decisions and factum of certain criminal proceedings. The amendment application was contested by the plaintiff-petitioner who also filed a reply. Vide the impugned order dated 14.03.2019 the Trial Court allowed the amendment application. Hence, the present revision petition has

been filed by the plaintiff-petitioner.

Learned counsel for the plaintiff-petitioner would contend that the application has been filed at the fag end and is wholly unnecessary for adjudicating the present case. It is submitted that the facts sought to be got incorporated by way of amendment have no bearing to the facts of the case.

Per contra, learned counsel for the defendant-respondent has contended that the defendant-respondent has come to know about certain malicious acts of the plaintiff-petitioner during the pendency of the present suit which need to be brought on the record and which facts will enable the Trial Court to effectually decide the issues in hand.

Heard.

The nature of the amendment sought in the present case does not change the stand taken by the defendant-respondent in any manner. Rather, certain civil court proceedings which culminated during the pendency of the present suit are sought to be brought on the record as also some criminal proceedings filed by the wife of the defendant-respondent. Merely because there is some delay in moving the amendment application is not reason enough to reject the amendment sought. Learned counsel for the plaintiff-petitioner has not been able to show as to what prejudice would be caused to the plaintiff-petitioner by allowing the amendment application.

It is trite that the law regarding amendment of a written statement is much more liberal than the law relating to amendment of the plaint. The Supreme Court in the case of **Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. [2006 (2) RCR (Civil) 577]** has held as under :

“13. The object of the rule is that Courts should try the merits of the case that come before them and should,

consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

14. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned

Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

Further, in the case of **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. [2007 (2) RCR (Civil) 830]** it has been held as under :

“22. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 Supreme Court 357], this Court observed “that the Courts are more generous in allowing amendment of the written statement as the question of

prejudice is less likely to operate in that event". In that case this Court also held "that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."

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 plaintiff 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."

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

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

03.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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