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

Civil Revision No.2881 of 2022 (O&M)
DATE OF DECISION : 17.01.2023

Suresh

.....Petitioner

Versus

Mange (since deceased) through his LRs and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raghav Sharma, Advocate for the petitioner

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ALKA SARIN, J. (Oral):

The challenge in the present revision petition is to the order dated 25.01.2022 passed by the Civil Judge (Junior Division), Panipat whereby application filed by the defendant-respondent under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) has been allowed.

Learned counsel for the plaintiff-petitioner would contend that the application had been filed after three witnesses of the plaintiff-petitioner had been examined and that the application for amendment had been filed only to fill in the lacuna in the case of the defendant-respondent.

The learned counsel would further contend that a totally new plea is now sought to be raised by way of the amendment.

Heard.

A perusal of the impugned order reveals that the Court has specifically observed that by way of the amendment the defendant-respondent only wished to explain the pleadings by giving a description of the revenue khasra numbers as well as consolidation scheme and by submitting a site plan of the existing construction raised by both the parties which, in the opinion of the Court, would assist the Court in arriving at a just decision.

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 :

“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.

21. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai, 2000(1) RCR (Rent) 10:2000(1) RCR (Civil) 511: (2000(1) SCC 712) and Baldev Singh & Ors. v. Manohar Singh (2006 (6) SCC 498)]. Even the decision relied on by the plaintiff in Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court

observed in Basavan Jaggu Dhobi's case (supra) as follows :-

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 Civil Procedure Code by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

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."

It has further been held in para-31 as under :

"31. For the reasons aforesaid, we are unable to sustain the judgment of the High Court rejecting the application for amendment of written statement on the ground that if such amendment was allowed it would seriously prejudice the plaintiff. There is yet another aspect of the matter. The trial court on consideration of the written statement as well as the application for amendment of the written statement, in its discretion

allowed the application for amendment of the written statement. The High Court ought not to have reversed the said order of the trial court, rejecting the application for amendment of the written statement, when the trial court has exercised its discretion in allowing the amendment of written statement on consideration of the principles of law and the material on record.”

In view of the above, I do not find any merit in the present revision petition. Dismissed. Pending applications, if any, also stand disposed off.

17.01.2023
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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