

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4794-2022 (O&M)
Date of decision: 15.05.2023

Sonia Gupta

...Petitioner

VS

Anu Gupta and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Bansal, Advocate,
For the petitioner.

Mr. C.L.Sharma, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 31.08.2022 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Hoshiarpur whereby, application filed by petitioner-defendant under Order 6 Rule 17 CPC for amendment of written statement, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondents herein/plaintiffs filed a suit for declaration that respondents are owners in possession of the property. Transfer deed executed by late Tirath Ram Aggarwal in favour of petitioner is not binding on the respondents as they are not party to it. The civil suit was filed vide plaint dated 01.12.2018. The written statement dated 31.05.2019 was filed by petitioner.

2.2. Defendant No.2 in civil suit i.e., Tirath Ram Aggarwal died on 27.11.2019 after the pleadings were completed in civil suit. Plaintiff No.1 and petitioner-defendant No.1 are real sisters. Petitioner claimed that Will dated 10.04.2019 was executed by Tirath Ram Aggarwal bequeathing the

suit property in her favour and accordingly moved an application dated 03.01.2020 for impleading herself as sole legal heir of said Tirath Ram Aggarwal. Contested reply dated 05.02.2020 was filed by respondents.

2.3. Vide order dated 24.01.2022 (Annexure P-4), learned Trial Court allowed the said application and petitioner was impleaded as LR for the purpose pursuing the case.

2.4. Due to demise of Sh. Tirath Ram Aggarwal since the dispute was relating to property in a family, it became necessary for petitioner to amend the written statement and counter claim. Accordingly, an application dated 20.11.2020 (Annexure P-1) was moved for amendment of written statement along with counter claim.

2.5. Vide impugned order dated 31.08.2022 (Annexure P-3), the said application was rejected.

3. Learned counsel for petitioner would canvass that the impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner may be permitted to amend written statement in the interest of justice and equity.

4. Per contra, learned counsel for respondents strenuously opposes the civil revision and supports the impugned order being based on correct findings.

5. I have heard learned counsel for parties and perused the case file.

6. Application Annexure P-1 is premised on the basis that proposed amendment is necessitated due to the developments which took place after filing of the earlier written statement and the same, therefore, could not have been pleaded at the time of unamended written statement.

Even if some of those events preceded the death of Tirath Ram-defendant No.2 (deceased), that would not be the total bar against amendment of written statement by the petitioner.

7. I am of the view that provisions of Order 8 Rule 1 CPC, though are to be strictly adhered to, but Court could have permitted to amend written statement at the instance of defendant subject to terms and conditions, as aforementioned provisions of law have been held to be directory in nature in view of law laid down by the Supreme Court in '*Salem Bar Association Vs. UOI*' reported in *2005(6) SCC 344*. The Courts should be liberal while interpreting the aforementioned provisions of Civil Procedure Code and should not be too harsh.

8. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. They cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by amending the written statement ought not to be taken away by the Court except in a case of their deliberate omission/failure to amend written statement more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to amend written statement. Trial in the suit may lead to unjust consequences in the absence of an opportunity to the petitioner-defendant to amend written statement.

9. Learned counsel for petitioner-defendants undertakes to file the amended written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

10. Since the trial is at nascent stage and plaintiffs' evidence is yet to commence, accordingly I deem it appropriate to grant one opportunity to

petitioner-defendant to file amended written statement, subject to costs of Rs.5,000/- to be paid to plaintiff/respondent No.1, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

15.05.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No