

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**126****CR No.1253 of 2024****Date of Decision : 15.04.2024**

Gurvinderjeet Kaur Gill

....Petitioner

VERSUS

Gurshan Singh Gill

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arihant Jain, Advocate for the petitioner.

Mr. Daman Preet Singh Bajwa, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 21.02.2024 whereby the application filed by the defendant-petitioner under Order VI Rule 17 CPC for amendment of the written statement has been rejected.

2. The brief facts relevant to the present case are that the plaintiff-respondent has filed a suit for mandatory injunction directing the defendant-petitioner to vacate and hand over vacant possession of portion of property bearing No.692/2 (Old), B-XX-2789 (New) i.e. one room, one store, bathroom, situated at Gurdev Nagar, Ludhiana. In the written statement the defendant-petitioner took a stand that the house in dispute was a matrimonial house of the defendant-petitioner and that she had every right to reside in the said premises. At the stage of evidence of the defendant-petitioner the present application for amendment of the written statement was filed

wherein a prayer was made for adding para 5-a in the written statement, which reads as under :

“5-a. That under the Protection of Women from Domestic Violence Act, 2005, the applicant was in domestic relationship with the respondent and resided together in shared household from the year 1994 and thus the applicant has every right to reside in the shared household i.e. the disputed house.”

3. The said application was contested by the plaintiff-respondent and vide the impugned order dated 21.02.2024 the application was dismissed.

4. Learned counsel for the defendant-petitioner would contend that the law regarding amendment qua written statement is more liberal than that regarding amendment of the plaint. In support of his argument he has relied upon a judgment of the Hon'ble Supreme Court in the case of **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. [2007 (2) RCR (Civil) 830]**.

5. *Per contra* learned counsel for the plaintiff-respondent has contended that the suit in the present case was filed in the year 2020 and now the application has been filed for amendment of the written statement and that the case is already at the stage of evidence of the defendant-petitioner.

6. Heard.

7. In the present case the only amendment that the defendant-petitioner seeks is addition of para 5-a in the written statement. Hon'ble

Supreme Court in the case of **Usha Balashaheb Swami** (*supra*) has 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 plaint 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."*

8. 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.”

9. It is trite that the law regarding the amendment of written statement is more liberal. The amendment sought by the defendant-petitioner would not in any way cause any prejudice to the plaintiff-respondent. The defendant-petitioner has already taken a stand in the written statement that she was married to Parminderjit Singh Gill and that she had been residing in the disputed house with her deceased husband.

10. In view of the above, the present revision petition is allowed. Accordingly, the application filed by the defendant-petitioner for amendment of her written statement stands allowed. The plaintiff-respondent would be at liberty to file an amended replication. In case any evidence is led in this regard by the defendant-petitioner the plaintiff-respondent, who

has already concluded his evidence, would have the right to rebut the evidence led in this regard.

11. The present petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

15.04.2024
jk

(ALKA SARIN)
JUDGE

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