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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1612-2024 (O&M)
Date of Decision : 29.07.2024

Bimal Kumar ... Petitioner(s)

Versus

Surjit Kumar ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurav Bhatia, Advocate for the petitioner.

Mr. P.S. Paul, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present petition has been filed challenging the order dated 06.02.2024 whereby the application filed for amendment of the written statement has been dismissed by the Trial Court.
2. Learned counsel for the defendant-petitioner would contend that the plea being raised now in the proposed amended written statement is in addition to the plea already raised and there is no contradiction. The learned counsel has relied upon the judgments in the cases of **Mahila Ramkali Devi & Ors. Vs. Nandram (D) Thr. LRs & Ors. [AIR 2015 SC 2270]; Aadish Aggarwal & Anr. Vs. Brijeshwar Swaroop & Anr. [2018 (1) RCR (Civil) 33]; Satnam Singh Vs. Kuldeep Singh & Ors. [2023 (3) RCR (Civil) 570]** and **Prem Lata Vs. Baljeet & Ors. [2024 (1) RCR (Civil) 10]**.

3. *Per contra* the learned counsel for the plaintiff-respondent would contend that despite 16 adjournments, witnesses of the plaintiff-respondent have not been cross-examined and that the only endeavour is to delay the matter.

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

5. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** has 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 negatived.

(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 malafide, 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)".*

6. The matter is still at the initial stage inasmuch as the evidence of the plaintiff-respondent has just started. It is not the case of the plaintiff-respondent that a time-barred claim is being introduced or that any grave

injustice would be caused to the plaintiff-respondent. It is also not the case of the plaintiff-respondent that the amendment sought is *malafide*. The defendant-petitioner wants to add a sub para at the end of para No.3 which reads as under :

“It is pertinent to mention here that prior to the agreement to sell in question plaintiff also entered into an agreement to sell dated 26.12.2017 with defendant and later on the said agreement was cancelled on 09.02.2018 and an amount of Rs.10,00,000/- which was paid as earnest money to defendant was returned to plaintiff. It become crystal like clear that vide writing dated 09.02.2018 the plaintiff has received Rs.10,00,000/- from the defendant, thus again question of paying Rs.5,00,000/- as earnest money again to the defendant vide agreement to sell dated 09.02.2018 i.e. agreement in dispute does not arise. It is further essential to mention here that the defendant got the sale deed of the land, which was agreed to sell to the plaintiff, executed in favour of his sister-in-law namely Kamlesh Rani and the defendant is having the Power of Attorney of the said Kamlesh Rani in his favour. Thus the defendant is/was in a position to execute the sale deed in favour of the plaintiff.”

The said amendment would neither cause any prejudice to the plaintiff-respondent nor would it change the nature of defense.

7. In view of the above, the present revision petition is allowed. The application (Annexure P-2) seeking amendment of the written statement stands allowed. However, keeping in view the fact that the defendant-

petitioner has been trying to delay the matter on one pretext or the other and has taken over 16 adjournments only to cross-examine the witnesses of the plaintiff-respondent as also the fact that the present application has been filed after the commencement of the evidence, this Court deems it fit to allow the present revision petition subject to payment of costs of Rs.30,000/- to be paid to the plaintiff-respondent which shall be a condition precedent.

8. Needless to say that the plaintiff-respondent would always be at liberty to file his amended replication.

9. Disposed off accordingly. Pending applications, if any, also stand disposed off.

29.07.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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