

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-6550-2023 (O&M)  
Date of Decision: January 09, 2024

Neelam Rani  
...Petitioner

Versus

Sukhwinder Singh  
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vaibhav Sehgal, Advocate  
for the petitioner.

Mr.Parunjeet Singh, Advocate  
for the respondent.

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ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 21.09.2023 (Annexure P-6) passed by learned Court below, whereby, an application filed by the petitioner (who was defendant before learned Court below) for seeking amendment of the written statement was dismissed.

For the convenience of discussion, the parties are referred to as making appearance before learned Court below.

The material facts, as culled out from the paperbook are as follows:-

That, initially, plaintiff had filed a suit for possession, by way of specific performance of an agreement to sell dated 08.05.2017, in respect of

the property, as detailed therein.

In the plaint, it was asserted about the defendant representing herself to be owner in possession of one shop measuring 27.77 sq. yards, consisting of double storey building, on the basis of registered sale deed dated 25.07.1996. Further, the extent of consideration, so settled between the parties as well as the amounts paid, from time to time, were mentioned. However, it was asserted in the plaint about the defendant having not got executed the sale deed, despite plaintiff, having remained ready and willing to get the same executed.

The written statement was filed, wherein, besides taking preliminary objections to dispute the maintainability of the suit in the present form and also about plaintiff, having not come to the Court with clean hands, the ownership of the defendant regarding the shop measuring 27.77 sq. yards, on the basis of the registered sale deed dated 25.07.1996, as such, was not disputed. Even, it was not denied about the agreement to sell having reached between the parties. But the specific version was asserted about the plaintiff to have failed to perform, his part of the agreement. Besides the same, receipt of an amount of Rs.2 lakh, as such, was admitted, but the residue amounts having paid on 23.05.2017 and 02.11.2017, as such, have been denied. Also, it was denied that the date of registration of the sale deed was extended to 07.01.2018.

After framing of the issues, the evidence of the plaintiff was recorded and closed. The defendant as well as her husband, namely Sh.Davinder Kumar had also been examined as witnesses. However, at that stage, an

application for seeking amendment of the written statement was filed. In the application, it is asserted about the endorsement with regard to the payment of Rs.5 lakh additionally, to be forged and fabricated. Besides the same, it has also been averred that the property in dispute is the only residential house of the defendant. She and her husband will suffer extreme hardship, in case the property is directed to be sold to the plaintiff. The defendant was in disadvantageous position, at the time when, she was made to enter into the agreement, as she and her husband were physically very weak. The defendant intended to make addition of preliminary objection No.6, which reads as follows:-

*“i) The Preliminary objection No.6 may kindly be added as follows:-*

*P.O. No.6, "The house in dispute was purchased by the defendant on 17.07.1996, vide sale deed bearing Wasika no. 14477, copy of which is already placed on the file.*

*The said property is the only residential house of the defendant/applicant. The defendant/ applicant suffered a serious injury on 31.12.2008, when she was sitting on the pillion seat of the motor cycle being driven by her husband Davinder Kumar. Bones of her right leg were broken into pieces and she was admitted in the hospital Krishna Charitable Hospital, Model Town, Ludhiana and was operated upon. Rods were inserted in her leg and she is unable to walk properly thereafter.*

*Her husband Davinder Kumar also suffered an accident when he was riding his motor cycle and met with a serious accident with a motorcycle and a Tata Ace (Chhota Hathi). He suffered fracture in his right leg and was hospitalized for one month in Civil Hospital, Ludhiana. Thereafter, he has been walking with the help of a stick, as there is extreme pain in his leg and pelvis. This accident took place on performed 22.12.2015 and operations were on 1.1.2016 and 8.1.2016 in Civil Hospital, Ludhiana.*

*Both the husband and wife are therefore handicapped and are not able to lead a normal life.*

*The house which is only 27 sq. yards, was purchased for their residence and on the ground floor there was a room which was converted into a small shop for the purpose of earning their livelihood. The whole property is residential. The defendant has no other residential house in Ludhiana or elsewhere. It shall be extreme hardship for the defendant in case the suit which is otherwise not maintainable and is based on false allegations is decreed. Moreover, the plaintiff was in advantageous position at the time when he got executed the said agreement from the defendant. The defendant has prepared a video of the property which will clarify the position before the Hon'ble court. Pen drive is attached herewith for the kind perusal of the Hon'ble court showing the state of the property at present.*

*The aforementioned plea is strictly in the alternative and the plaintiff is not entitled to any relief for specific performance otherwise it was highly in equitable in the property is directed to be transferred to the plaintiff who has indulged in forgery and fabrication.*

*Hence, the suit for specific performance is liable to be dismissed."*

Also, it is averred in the application that the amendment is of formal nature and if allowed, it shall meet the ends of justice, as the defendant had been living along with her husband, in the said property and she has no other place to live.

In reply, the claim for amendment was resisted. Besides taking preliminary objections, with regard to the maintainability of the application and about the defendant having not come to the Court with clean hands and the application, having filed just for causing delay in the Court proceedings and harassing the plaintiff, on merits, it has been denied that plaintiff has forged and fabricated any endorsement, alleging it to be dated 17.03.2018 and claiming Rs.5 lakh additionally paid to defendant Neelam Rani. All

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other averments made in the application, with regard to the extreme hardship suffered by the defendant, had also been denied.

After hearing learned counsel for the parties and on appraisal of the material coming forth, vide impugned order, the application for seeking amendment of the written statement, as such, was dismissed by learned Court below.

Feeling aggrieved by the order, so passed, the petitioner-defendant has filed the present revision petition.

In pursuance of the notice issued, the respondent made appearance through counsel.

Learned counsel for the parties heard.

It is settled principle of law that amendment of the written statement has to be liberally construed and has to be treated on different pedestal than that of amendment of the plaint. In case of amendment of the written statement, the defendant is entitled to take inconsistent plea and in appropriate cases, even the admission made on earlier occasion, can be allowed to be withdrawn. The amendment of written statement stands on different pedestal and the Court is not obligated to go into the correctness and falsity of the case of the parties at this stage. It is mandatory on the part of the Court to allow all bonafide amendments, which are necessary for real determination of the issues. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice between the parties. Each case has to be tested on the basis of its own merits. The correctness or falsity of the

amendment cannot be commented upon at this stage. On the ground of elaboration of facts, in support of earlier plea, written statement can be allowed to be amended.

It is settled proposition of law that bonafide amendment can be allowed, at any stage of the suit. The amendments which are necessary for determination of the real question in controversy can be allowed. It shall be appropriate to make reference to the decision rendered in *Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830*, wherein, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Paragraph Nos.20 and 23 of the aforesaid judgment are being reproduced as herein:-

*“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.*

*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.”*

Now, reverting to the case in hand. The impugned order

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reveals that learned Court below dismissed the application for seeking amendment of the written statement, thereby, assigning two reasons; firstly that it has been filed at late stage of the case, when the evidence of the plaintiff had already been concluded and defendant had commenced her evidence and two witnesses, namely Neelam Rani and her husband Davinder Kumar had already been examined and that too, 22 opportunities for leading evidence had already been availed.

In the light of the same, secondly, it has also been observed by learned Court below that in the pleadings, at first instance, the petitioner had admitted about the execution of the agreement to sell, being qua the shop. In the light of the same, now, the proposed amendment, amounts to raising contradictory plea about the property having agreed to be sold to be a residential unit available. In this regard, as already observed aforesaid, while seeking amendment of the written statement, there can be withdrawal of the admission earlier made, if the necessity, so arises, keeping in view the facts and circumstances of each case. It should be noted that in the present case, in the written statement itself, no doubt, the execution of agreement to sell, as such, has not disputed, but however, at the same time, it should also be noted that in the plaint, the agreement to sell with regard to the suit property was alleged to have been made, on the basis of the registered sale deed dated 25.07.1996, on the basis whereof, the petitioner had acquired the ownership rights. The copy of the said sale deed has been placed on record and even, the vernacular copy of the same has come on record. Suffice to consider the recitals of the sale deed. There is intentional restraint made by

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this Court to appraise the recitals of the sale deed, which shall be appraised in an independent manner by learned Court below, at the appropriate stage.

Vide proposed amendment, the petitioner, as such, is not withdrawing any assertion made in the written statement, with regard to execution of the agreement to sell and the manner and extent of amount received. Whatsoever, the petitioner intends to bring on record by way of proposed amendment is an elaboration of the earlier defence, as to under what compelling circumstances, she has entered into agreement to sell. The detailed version, relating to the circumstances, shall be appraised by the Court concerned, at the relevant stage, but however, in any case, it does not amount to be contradictory to the earlier plea. The amendment as sought, at the maximum, amounts to factual clarity of the defence plea earlier taken. The amendment sought to be incorporated, is only explanatory and veracity of the correctness would be appreciated by learned Court below, at the relevant stage. Even though, it is the version of the respondent about the proposed amendment having been sought, for the purpose of delaying the decision of the case, but however, on query by the Court, it has been submitted by learned counsel for the petitioner that the defendant do not want to further cross-examine any witness of the plaintiff or re-call the DWs, already so examined. In such circumstances, the application, so filed, for seeking amendment, by any stretch of imagination, cannot be held to be malafide, filed with a purpose to cause delay.

In view of the aforesaid observations, the present revision is allowed and the impugned order is set aside and the application, for seeking

amendment of the written statement, filed by the petitioner-defendant,  
stands accepted.

January 09, 2024  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No