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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-6231-2018 (O&M)****Date of Decision : 06.11.2025**

Vijay Kapoor (deceased) through LRs

... Petitioners

Versus

Rajinder Kumar Sharma and Another

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral)

1. The challenge in the present revision petition is to order dated 24.07.2018 whereby the application for amendment of the written statement and counter-claim under Order VI Rule 17 of the Code of Civil Procedure, 1908 has been allowed.

2. Learned counsel for the petitioners would contend that since the petition would have been dismissed on the ground that signatures of the defendant-respondent No.2 - Brij Inder Mohan Sharma - were not affixed on the written statement nor verification of Brij Inder Mohan Sharma was incorporated in the counter-claim, hence the defect could not have been permitted to be removed by way of an amendment after commencement of the trial as it would cause irreparable loss and injury to the plaintiff-petitioners.

3. Heard.

4. In the present case the only amendment sought is for permitting

the signatures of the defendant-respondent No.2 - Brij Inder Mohan Sharma - on the written statement and also for incorporating the verification to the counter-claim by Brij Inder Mohan Sharma. Challenge has been laid to the said order on the ground that since the written statement was not signed by Brij Inder Mohan Sharma and verification was also not incorporated in the counter-claim on behalf of Brij Inder Mohan Sharma and since the other defendant, namely Rajinder Kumar Sharma (respondent No.1 herein) had not stepped into the witness-box, by allowing the amendment a valuable right to the plaintiff-petitioners has been taken away.

5. This Court in the case of **Ismail Khan vs. Bir Singh & Anr.** [2016 (1) RCR (Civil) 135] relying on the judgment of the Hon'ble Supreme Court in the case of **Uday Shankar Triyar vs. Ram Kalewar Prasad & Anr.** [2006 (1) RCR (Civil) 18] held as under :

“6. The facts as have been placed before this Court are that after service, the petitioner/ defendant no.1 appeared. The written statement already filed by him was not signed by him but was signed by his counsel only, is not in dispute. There was no objection raised by the plaintiff at any stage as the entire evidence of the plaintiff was concluded. The witnesses produced by him were even cross-examined by the petitioner/ defendant no.1. As claimed by the petitioner, the error was noticed when defendant no.1 was to lead his evidence. Immediately thereafter, the application was filed to rectify the defect. The issue which arises for consideration of this Court is as to whether at a later stage the petitioner/ defendant no.1 can be permitted

to sign written statement already filed when the case is at the stage of his evidence. An identical issue came up for consideration before Hon'ble the Supreme Court in Uday Shankar Triyar's case (supra), wherein it was opined that if the plaint or written statement is not signed by a party on account of a bonafide error, the defect can be directed to be rectified either by the trial court at any time before the judgment or even by the Appellate Court. Certain exceptions have been carved out. Relevant paras of the judgment are extracted below:-

“16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural

defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

(i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;

7. *To similar effect are the earlier judgments of this Court in Smt. Mukhtiar Kaur and Harbhajan Singh's cases (supra). Once it has been opined by Hon'ble the Supreme Court that the defect of non-signing of written statement*

by the defendant is the procedural one, which can be rectified not only during the course of trial but even at the appellate stage, in my opinion, the rejection of the prayer of the petitioner/ defendant no.1 to sign written statement already filed and to file affidavit in support thereof is erroneous, hence, the order deserves to be set aside.”

6. In the present case, defendant-respondent No.2 - Brij Inder Mohan Sharma - not signing the written statement or incorporation of the verification in the counter-claim on his behalf are only procedural defects and the same can be permitted to be cured by filing an application under Order VI Rule 17 CPC as has been held by Hon’ble Supreme Court in case of **Uday Shankar Triyar** (supra) as also by this Court in case of **Ismail Khan** (supra).

7. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.11.2025
jk

(**ALKA SARIN**)
JUDGE

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