



118

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-6712-2024 (O&M)

Date of Decision: 14.11.2025

SANTRA DEVI

.... Petitioner

VERSUS

SHAKUNTALA DEVI

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rao Ajender Singh, Advocate for the petitioner.

Mr. Sahil Gupta, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 04.10.2024 passed by the learned Civil Judge (Senior Division), Rewari whereby the application filed by the petitioner herein for leading secondary evidence was dismissed.

2. Brief facts relevant to the present *lis* are that initially the respondent filed a suit for recovery of ₹1,03,92,000. Written statement was filed to the said plaint. Subsequently, an application was filed by the respondent for amending the plaint. The amendment sought was for addition of paras No.4(a), 5(a) and 10(a). Primarily the addition sought was for amending the recoverable amount from ₹1,03,92,000 to ₹1,91,15,318. Reply was filed to the said application.

3. At this point it needs to be noticed that earlier, before filing of the application for amendment of the plaint by the respondent, an application

was filed by the petitioner herein for production of the original agreement dated 01.09.2009. Reply was filed to the said application. The said application was dismissed by a detailed speaking order dated 31.01.2024 wherein it was held that there was no recital of any agreement to sell dated 01.09.2009 in the sale deed dated 04.11.2009 (Ex.P3). Even the agreement dated 01.09.2009 did not find any mention in the original written statement. Post the amendment being allowed vide order dated 28.08.2023, the amended plaint (Annexure P-5) was filed adding paras No.4(a), 5(a) and 10(a). Interestingly in the amended written statement filed by the petitioner, besides filing her response to the newly added paras No.4(a), 5(a) and 10(a), in the preliminary objections a totally new plea was raised in paras no.7 and 8 regarding an agreement dated 01.09.2009. It is to be noted that both the parties have concluded their evidence. The petitioner herein thereafter filed an application for leading secondary evidence for producing the agreement dated 01.09.2009. A perusal of the application reveals that in the application it has simply been stated that the original agreement is in possession of the respondent and she has intentionally not produced the same. Reply was filed to the said application. Vide the impugned order dated 04.10.2024 the application was dismissed. Hence, the present revision petition.

4. Learned counsel for the petitioner would contend that the secondary evidence ought to have been allowed as earlier an application had been filed by the petitioner for production of the documents which are in possession of the respondent which application was dismissed on the ground that the alleged agreement dated 01.09.2009 was not mentioned in the sale

deed dated 04.11.2009 which was already on the record as Ex.P3. Learned counsel would further contend that the secondary evidence was necessitated after the respondent filed the amended plaint and the petitioner filed the amended written statement. It is further the contention of the learned counsel that besides responding to the amended paragraphs, the petitioner was at liberty to amend and to raise any new plea in the written statement which she had done by adding paras No.7 and 8 and once the new plea was added, she should have been permitted to lead the secondary evidence. It is still further the contention of the learned counsel that there is no statutory bar to amend the entire written statement while filing an amended one. In support of his arguments, learned counsel for the petitioner has relied upon the judgments of this Court in **M/s Lal Chand Balwant Rai & Ors. V/s M/s Harnarain Dass Gharsi Ram & Anr. [1983 PLR 444]** and **Sheo Ram V/s Madhu Ram & Ors. [2009 (3) RCR (Civil) 646]**.

5. *Per contra*, learned counsel for the respondent has contended that in the original written statement there was no plea raised regarding the alleged agreement dated 01.09.2009. Even the sale deed dated 04.11.2009, which was already on the record as Ex.P3, did not refer to the agreement dated 01.09.2009. It is further the contention of the learned counsel that while amending the written statement the petitioner raised an entirely new plea for which no permission was taken from the Court. Learned counsel would further contend that while filing the amended written statement only the amended paragraphs of the plaint were to be responded to and no new plea could have been raised. In support of his arguments, learned counsel for the respondent

has relied upon the judgment of the Hon'ble Supreme Court in **Gurdial Singh V/s Raj Kumar Aneja [2002 (1) RCR (Rent) 194]** and by this Court in **Shri Charanjit Lal V/s Shri Ramesh Kumar [2012 (29) RCR (Civil) 611]**. It is still further the contention of the learned counsel that in **Shri Charanjit Lal's case** (supra), the case of **Sheo Ram** (supra) and other judgments were noticed and ignored for the reasons that the Hon'ble Supreme Court in the case of **Gurdial Singh** (supra) had opined that while filing amended written statement to the amended plaint, new pleas cannot be permitted to be taken. Further reliance has been placed upon the judgment of the Division Bench of the Delhi High Court in the case of **Pardeep Mehra V/s Bch Electric Ltd. [2018 AIR CC 308]** wherein a similar view was taken. Learned counsel has further contended that in order to lead the secondary evidence, the petitioner had to comply with the requirements of Section 65 of the Evidence Act, 1872. The application filed for production of the document was prior to the filing of the amended plaint which stood rejected on the ground that there was no reference to the said document anywhere in the sale deed dated 04.11.2009 (Ex.P3). Once the said application was dismissed, the petitioner, when he filed the application for leading secondary evidence, had to comply necessarily with the provisions of Section 65 of the Evidence Act, 1872.

6. Heard.

7. In the present case while filing an amended written statement to the amended plaint the petitioner not only filed her response to the newly added paras No.4(a), 5(a) and 10(a) but also added an absolutely new plea i.e. paras No.7 and 8 to the preliminary objections. The Courts cannot be mute

spectators to the blatant violation of the provisions of law. It is incumbent upon the Court to see that when an amended written statement is filed, it is in consonance with the amendments made in the plaint and no new plea is raised. However, it appears to have escaped the notice of the Trial Court that an absolutely new plea had been raised in the amended written statement though no such permission was sought for amending the same. No doubt the petitioner could have always filed an application for amending the written statement, however, in the present case no such application was filed and without seeking the permission of the Court an absolutely new plea was raised and added in the amended written statement.

8. The judgments relied upon by the learned counsel for the petitioner in the cases of **M/s Lal Chand Balwant Rai** (supra) and **Sheo Ram** (supra) would not come to his aid in view of the law laid down by the Hon'ble Supreme Court in **Gurdial Singh's** case (supra) wherein their Lordships have held as under :

'Thus, once a prayer for amendment is allowed the original pleading should incorporate the changes in a different ink or an amended pleading may be filed wherein with the use of a highlighter or by underlining in red the changes made may be distinctly shown. The amendments will be incorporated in the pleading by the party with the leave of the Court and within the time limited for that purpose or else within fourteen days as provided by Order 6 Rule 18 of the CPC. The Court or an officer authorized

by the Court in this behalf, may compare the original and the amended pleading in the light of the contents of the amendment application and the order of the Court permitting the same and certify whether the amended pleading conforms to the order of the Court permitting the amendment. Such practice accords with the provisions of Code of Civil Procedure and also preserves the sanctity of record of the Court. It is also conducive to the ends of justice in as much as by a bare look at the amended pleading the Court would be able to appreciate the shift in stand, if any, between the original pleading and the amended pleading. These advantages are in addition to convenience and achieving maintenance of discipline by the parties before the Court. Amendments and consequential amendments, allowed by the Court and incorporated in the original pleadings, would enable only one set of pleadings being available on record and that would avoid confusion and delay at the trial. Most of the High Courts in the country follow this practice, if necessary by making provisions in the rules framed by the High Court for governing the subordinate Courts and their Original Side, if there be one. In fact in the State of Punjab and Haryana and Union Territory of Chandigarh, there is a local amendment whereby the text of Rule 17 in

Order 6 of the CPC has been renumbered as sub-rule (1) and the following sub-rule (2) added:-

"(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading"

The abovesaid rule appears to have been completely overlooked while moving the application for amendment. It is expected that the Courts in Punjab, Haryana and Chandigarh would follow the rule in letter and spirit.

When one of the parties has been permitted to amend his pleading, an opportunity has to be given to the opposite party to amend his pleading. The opposite party shall also have to make an application under Order 6 Rule 17 of the CPC which, of course, would ordinarily and liberally be allowed. Such amendments are known as a consequential amendments. The phrase "consequential amendment" finds mention in the decision of this Court in Bikram Singh & Ors. Vs. Ram Baboo & Ors., AIR 1981 SC 2036. The expression is judicially recognized. While granting leave to amend a pleading by way of consequential amendment the Court shall see that the plea sought to be introduced is by way of an answer to the plea previously permitted to be

incorporated by way of amendment by the opposite party.

A new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment’.

It has categorically been held by their Lordships that a new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent amendment. In view of the law laid down by the Hon’ble Supreme Court, the amendment raising the new plea cannot be accepted. The secondary evidence sought is qua the said new plea and as such the necessity for this Court to dwell on the amendment and the raising of a new plea in the written statement by the petitioner.

9. Coming to the issue of secondary evidence, firstly, the plea regarding the agreement dated 01.09.2009 was beyond what is permissible as per the law as laid down by the Hon’ble Supreme Court in **Gurdial Singh’s** case (supra). Since the agreement dated 01.09.2009 was added as an additional plea in the written statement, without any permission having been sought from the Court qua the same, the secondary evidence possibly cannot be allowed. Secondly, the application itself does not conform to the requirements of Section 65 of the Evidence Act, 1872. In the case of **Vijay V/s Union of India & Ors. [2023 (17) SCC 455]**, the Hon’ble Supreme Court has held as under :

‘After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:

33.1 Law requires the best evidence to be given first, that is, primary evidence.

33.2 Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.

33.3 If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.

33.4 A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.

33.5 When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed.

33.6 Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect.

33.7 When the copies are produced in the absence of the original document, they become good secondary evidence.

Still, there must be foundational evidence that the alleged copy is a true copy of the original.

33.8 Before producing secondary evidence of the contents of a document, the non-production of the original must be accounted for in a manner that can bring it within one or other of the cases provided for in the section.

33.9 Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law.

34. A reading of Section 65(a) of the Evidence Act displays the following:

a. Secondary evidence can be presented as a substitute when the original document/ primary evidence is in the possession of the opposing party or held by a third party;

b. Such a person refuses to produce the document even after due notice,

c. It must be ensured that the alleged copy is a true copy of the original’.

10. The reliance of the learned counsel for the petitioner on the application filed earlier to state that the document was in possession of the respondent and as such the petitioner should be permitted to lead the secondary evidence cannot be accepted as that application already stood rejected vide order dated 31.01.2024 (Annexure P-12) which order attained finality inasmuch as the petitioner did not challenge the same. Therefore, it

was incumbent on the petitioner to have met the requirements of Section 65 of the Evidence Act, 1872 while filing the application for leading secondary evidence. In the reply to the application for production of the original agreement dated 01.09.2009 the respondent had taken a specific stand that any such document was ever executed. Once the agreement itself was denied, the petitioner had to explain as to where the original was and from where the photocopy of the same was procured. Having failed to comply with the provisions of Section 65 of the Evidence Act, 1872, the application for leading secondary evidence has rightly been dismissed.

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

12. It made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

14.11.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No