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

CR-1145-2023 (O&M)

Date of Decision: 27.01.2026

MANJIT KAUR

.... Petitioner

VERSUS

PIARA SINGH (SINCE DECEASED) THR LRS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepak Verma, Advocate for the petitioner.

Mr. Parvinder Singh, Advocate for respondents No.1 and 2.

Service of respondent No.3 dispensed with
vide order dated 01.05.2023.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 24.01.2023 (P-10) as well as the order passed on the review application dated 06.02.2023 (P-13), both passed by the learned Civil Judge (Junior Division), Garhshankar.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for specific performance of agreement to sell dated 08.07.2013. Written statement was filed by the defendant-respondents. During the pendency of the suit, at the stage of defendants' evidence, an application was filed for permission to amend the written statement by defendant-respondent No.1. Reply was filed to the said application. Vide the impugned order dated 24.01.2023 (P-10), the application was allowed subject

to payment of ₹1,500 as costs to be paid by defendant-respondent No.1 to the plaintiff-petitioner. Costs, as imposed vide order dated 24.01.2023, were paid. Thereafter, an application for review of the order dated 24.01.2023 (P-10) was filed on 31.01.2023. Reply was filed to the said application. Vide the impugned order dated 06.02.2023 (P-13) the review application was dismissed. Meanwhile on 04.02.2023 an application for correction of the *zimni* order dated 30.01.2023 wherein it was noticed that the costs had been paid by defendant-respondent No.1 and accepted by the plaintiff-petitioner was also filed. The said application was dismissed vide order dated 17.02.2023. The present revision petition was filed on 15.02.2023.

3. Notice of motion was issued on 21.02.2023 and the Trial Court was directed to adjourn the matter beyond the date fixed by this Court. However, the fact that the costs have been paid and accepted and the fact of filing an application for correction of the *zimni* order dated 30.01.2023 appears to have not been brought to the notice of this Court. These facts were pointed out by the learned counsel for defendant-respondents No.1 and 2 only on 12.01.2026.

4. Learned counsel for the plaintiff-petitioner herein has contended that mere acceptance of costs by the plaintiff-petitioner would not preclude him from assailing the order as allowing of the application subject to costs was not a condition precedent and the same was only imposed on account of the delay in filing the application for amendment. In support of his arguments, learned counsel for the plaintiff-petitioner has relied upon the judgment of the

Hon'ble Supreme Court in the case of **Bijendra Nath Srivastava (Dead) through LRs Versus Mayank Srivastava [1994 (4) SCC 117]**.

5. *Per contra*, learned counsel for defendant-respondents No.1 and 2 would contend that once the costs have been accepted, the plaintiff-petitioner was precluded from challenging the said order. In support of his arguments, learned counsel for defendant-respondents No.1 and 2 has relied upon the judgment passed by this Court in **M/s Milap Foundry & Engineering Works & Anr. Versus M/s Futuristic Solutions Pvt. Ltd., [2025 NCPHHC 6008]**, **Amar Singh Versus Perhlad & Ors. [1989 (2) PLR 513]** and **Arti Devi & Ors. Versus Pardeep Kumar & Ors. [2017 (3) Law Herald 2444]**.

6. Heard.

7. In the present case the application for amendment was filed by the defendant-respondent No.1 which was allowed vide impugned order dated 24.01.2023 (P-10), the operative part of which reads as under :

'The amendment sought by the defendant pertains to some subsequent compromise during pendency of suit and same could not be pleaded at the time of filing earlier written statement. Perusal of file shows that vide order dated 22.11.2022 passed by this court, defendant was given opportunity to prove such compromise dated 07.06.2018 by way of secondary evidence. Though, defendant could have sought amendment of written statement earlier in the year 2019 till 2022 but still this court is of considered view

that mere delay in seeking amendment of written statement shall not be reason to decline the application outrightly. Since defendant wants to incorporate subsequent event alleging effecting of compromise between the parties during pendency of suit qua which one sale deed was also executed, such amendment shall not change the nature of suit nor change the subject matter of suit. Moreover, it would be appropriate to allow such amendment as the same would aid this court in adjudicating the dispute between the parties effectively notwithstanding the fact that defendant has sought the amendment after unreasonable delay. Such delay can certainly be compensated with the payment of cost to the opposite side. The case laws relied upon by plaintiff provide for different facts and they do not have any bearing on the present case. Therefore, application moved by defendant for seeking amendment of written statement is allowed, subject to payment of cost of Rs.1500/- by defendant no.1(a) to plaintiff.

To come up on 30.01.2023 for filing amended written statement by defendant no.1(a) and for payment of cost by defendant no.1(a) to plaintiff.'

On 30.01.2023, the costs were paid by the defendant-respondent No.1 and were accepted by the plaintiff-petitioner as is apparent from the copy of the

order dated 17.02.2023 which has been handed over in Court today dismissing the application filed for correction of the *zimni* order dated 30.01.2023. On 30.01.2023, in the *zimni* order passed by the Trial Court, it was noticed that the costs had been paid by the defendant-respondent No.1 and the same was accepted by the plaintiff-petitioner. An application was thereafter filed for correction of the said *zimni* order dated 30.01.2023 which was dismissed on 17.02.2023. The order dated 17.02.2023 on the application filed for correction of the *zimni* order dated 30.01.2023 reads as under :

'Reply to application for correction of zimni order dated 30.01.2023 is filed. Copy supplied to opposite side. Arguments on application are heard. File perused.

Application is moved by plaintiff with the averments that vide order dated 24.01.2023, application for amendment of written statement moved by defendant was allowed by this Court subject to payment of cost and thereafter vide order dated 30.01.2023, it has been mentioned in the zimni order that cost was paid. It is pleaded that cost was not paid and therefore, necessary correction be made in the zimni order. On the other hand, reply to application is filed by defendant in which it is pleaded that order has been passed by the Court correctly as cost was paid.

Having perused the case file carefully, this Court has heard both the sides.

As per order dated 24.01.2023, application moved by defendant for amendment of written statement was allowed subject to payment of cost of Rs.1500/- by defendant to plaintiff whereupon cost was paid on 30.01.2023 and amended written statement was filed by defendant. Nothing is there on record that there is any mistake in zimni order dated 30.01.2023 where it was mentioned that cost has been paid by defendant to plaintiff. It appears that plaintiff wants to deny such receipt of cost for the reasons best known to plaintiff. The application moved by plaintiff through counsel is not sustainable and there is nothing in zimni order dated 30.01.2023 which needs to be corrected. Hence, application moved by plaintiff on 16.02.2023 for correction of zimni order dated 30.01.2023, is hereby dismissed.

To come up on date already fixed i.e. 20.02.2023 for filing replication, if any, to amended written statement’.

The petitioner chose not to challenge the said order. Even in this petition, there is no challenge to the said order dated 17.02.2023.

8. At this stage, learned counsel for the plaintiff-petitioner would contend that since the petition was filed on 15.02.2023 hence there was no occasion to challenge the order dated 17.02.2023. However, there is no explanation forthcoming as to why a fresh petition could not have been filed challenging the order dated 17.02.2023 or an amendment sought in the present

petition laying challenge to the order dated 17.02.2023. Rather, the plaintiff-petitioner chose not to bring this fact to the notice of the Court and it was only on 12.01.2026 that for the first time the counsel for defendant-respondents No.1 and 2 pointed out that the amendment had been allowed subject to costs which stood paid.

9. The judgment relied upon the learned counsel for the plaintiff-petitioner in the case of **Bijendra Nath Srivastava (supra)** would not come to his aid inasmuch as in para Nos.20 and 21 of the said judgment it has been held as under :

'20. That apart the principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits. The said principle would not apply to a case where the direction for payment of costs is not a condition on which the petition is allowed the costs have been awarded independently in exercise of the discretionary power of the court to award costs because in such a case the party who has been awarded costs has no

opportunity to waive his right to question the validity or correctness of the order. The decision of the Andhra Pradesh High Court in The Metal Press Works Ltd. v. Calcutta GM Cotton Press Co. AIR 1976 Andhra Pradesh 205, on which reliance has been placed by the High Court, proceeds on the basis that awarding of costs was, in fact and substance, a part of the entire order allowing amendment in written statement and the said order was a conditional one. The decision of the Madras High Court in Prayag Dassjee v. Venkata Perumal AIR 1933 Madras 410 and the decisions of the Patna High Court in Ramcharan v. Custodian of Evacuee Property AIR 1964 Patna 275 and M Kepur Kumar v. Narain Singh AIR 1949 Patna 491 on which reliance has been placed in the said judgment of the Andhra Pradesh High Court also emphasises that the orders under challenge were conditional orders and payment of costs was a condition precedent to allowing the petition. In Devaiah v. Nagappa AIR 1965 Mysore 102, the order allowing amendment of the election petition contained a direction regarding payment of costs. It was held that the application was allowed without any condition and that the order was not conditional order and principle of estoppel was held inapplicable.

21. A perusal of order dated May 8, 1976 shows that the said order is not a conditional order. The Civil Judge, after considering the merits has allowed the proposed amendments. The costs were awarded not as a condition precedent to allowing the amendment but by way of exercise of the discretionary power of the Court to award costs to the opposite party. It may also be mentioned that the appellants did not accept the said order dated May 8, 1976. They assailed the validity of the same at the stage of final hearing before the trial court but the said contention was rejected by the Additional District & Sessions Judge on the view that the said order had become final as regards the proceedings before him and the same could not be recalled or reviewed. Thereafter, the appellants assailed the correctness of the order dated May 8, 1976 in the appeal filed by respondents No.1 and 3 in the High Court. The principle of estoppel arising from acceptance of costs so to preclude the appellants from challenging the validity of the order dated May 8, 1976 cannot, therefore, be invoked in the facts and circumstances of the present case. Since the grounds given by the High Court for upholding the order dated May 8, 1976 cannot be affirmed the amendments allowed by the said order insofar as they

relate to insertion of paragraphs 52 and 53 in the objection petition filed by respondent No.14 are set aside.'

In the case before the Hon'ble Supreme Court, the application was allowed and the costs had been imposed not as a condition precedent to allow the amendment but by way of exercise of the discretionary power of the Court to award costs to the opposite party. However, in the present case a perusal of the order dated 24.01.2023 would reveal that the amendment to the written statement was allowed subject to payment of costs. Once the application was allowed subject to the payment of costs of ₹1,500/-, the same would be treated as a condition precedent.

10. A Division Bench of this Court in **Amar Singh's** case (supra) has held as under :

'5. In the present case, the petitioner having accepted costs awarded in the order while allowing amendment of the plaint further mentioned that he was accepting the amount under protest. This was a unilateral act on the part of the petitioner. Even if he had not accepted the costs, the same would have been deposited in the Court by the plaintiff. If the petitioner had withdrawn the costs from the Court unilaterally stating that the withdrawal would be under protest, he could not approbate and reprobate, that is accepting benefit of the order and at the same time objecting to the passing of the order. He had to accept the order as a whole. What he did was that he accepted the

costs and thereby acquiesced in the correctness of the order passed. Although at the time of acceptance of the costs the petitioner stated that he was doing so under protest, that will not make any difference as the opposite party had not consented to the statement of the petitioner in this respect. If in fact the petitioner wanted to challenge the order of amendment of the plaint, there was no compulsion for him to accept the costs. The costs would have remained deposited in the Court. The right of the petitioner to the costs imposed by the Court on the plaintiff while allowing amendment of the plaint was not based on any right of the petitioner in the suit. The costs were ordered by the Court to compensate the petitioner for the inconvenience caused during the pendency of the suit till the plaint was amended. Such an order regarding costs was made on term or condition for amendment of the plaint in view of Order 6 Rule 17, Civil Procedure Code. Such an order could not be accepted in part by either of the party while denouncing the other part. The plaintiff could not file amended plaint stating that he could pay costs at the time of final decision of the suit. Likewise the defendant could not say while accepting the costs that he would challenge the order in appeal or revision or that he would return the costs withdrawn if the order of

amendment of plaint is set aside. The crux of the matter to be seen is as to what the petitioner did and not what he said. By acceptance of costs, he accepted the order as correct. He has taken benefit of the order. He cannot now turn around and say he will also challenge the order. By allowing him to challenge the order would amount to nullifying the effect of acceptance of costs. In such circumstances, he cannot approbate and reprobate. His own act would estop him. At the most it can be said that the petitioner had two options, one to accept the costs and to treat the order as correct, the other not to accept the costs, he exercised his choice in accepting the order as correct. His lodging the protest in such circumstances is meaningless. Reference here may be made to the decision of Madras High Court in R. Samudra Vijyam Chettiar v. Srinivasa Alwar, AIR 1956 Madras 301 laying down the following principle :-

"Where a man is entitled to one of two inconsistent rights and he has with full knowledge done an unequivocal act indicating his choice of the one he cannot afterwards pursue the other which after the first choice is by reason of the inconsistency no longer open to him. Such cases do not require

detriment to the other party as foundation for their application."

Similar view was taken by the Madras High Court in K. Shanmugham Pillai v. S. Shaimigham Pillai, AIR 1968 Madras 207. The view expressed by the Madras High Court in Ramaswami Chettiar v. Chidambaram Chettiar's case appears to be correct. The said High Court reiterated the view subsequently in H.G. Krishna Reddy v. M.M. Thimmiah's case. The view expressed in Randhir Singh v. Kamlesh's case, thus, cannot be accepted.

11. In view of the fact that the amendment application was allowed subject to payment of costs and the costs stood paid by the defendant-respondent No.1, the plaintiff-petitioner would be estopped from challenging the same after having accepted the costs.

12. 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.

27.01.2026
Aman Jain

(ALKA SARIN)
JUDGE

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