
(2008) 02 P&H CK 0250
In the Punjab And Haryana At Chandigarh

Havell's India Ltd.

APPELLANT

Vs

Evergreen Properties

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : (2008) 02 P&H CK 0250

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner is a defendant in a suit filed by the respondents seeking declaration, possession, mandatory and permanent injunction in regard to suit property, which is purchased by the petitioner. The petitioner-M/s Havell's India Ltd. (for short "petitioner-company") filed an application under Order 6 Rule 17 CPC seeking amendment of the written statement filed by the petitioner-company which has been declined by the trial court. Aggrieved against this order, the petitioner-company has filed the present revision.

2. The allegations in the plaint are that respondent No. 1 M/s Evergreen Properties is a partnership concern which had given bid for purchase of the property. Respondents No. 2 to 4 and 8 originally were the partners of this firm. Later on respondent No. 6 submitted his resignation from the partnership concern w.e.f. 31.12.1991. Plea is that he accordingly could not have acted on behalf of respondent No. 1 firm. It is then urged that respondents No. 5 and 6 in collusion with each other entered into a tripartite agreement with the petitioner-company and have sold suit property in its favour. Hence, the present suit is filed by respondent No. 1 company. Initially the petitioner-company was not impleaded as defendant and later on was so impleaded on account of the amendment sought by respondent No. 1 company. A separate written statement was filed by the petitioner-company taking a stand that it had purchased the property in dispute for a total sale consideration of Rs. 1.26 crore under a

tripartite agreement. The possession of the property was claimed by the petitioner-company, which was handed over to it where it has already commenced business after installing bulk of the machinery by investing huge amount. While responding to the averment contained in the plaint that respondent No. 1 firm was a partnership concern with respondents No. 2 to 4 and that respondent No. 6 had retired from the partnership firm etc., it is stated that the same is denied for want of knowledge further averring that respondent No. 1 be put to strict proof in this regard.

3. Issues were framed and suit was fixed for evidence of the plaintiffs-respondents. The evidence was concluded in the year 2006 and the suit was fixed for the evidence of the petitioner on 18.7.2006. As per the petitioner-company, while preparing the case for evidence, it is noticed that three of the most relevant legal pleas/objections could not be specifically raised in the written statement. Accordingly, an application seeking amendment of the written statement alongwith the proposed amendment is filed before the court. The said application, after taking response from the respondents, has now been declined, which is impugned through the present revision.

4. The first objection that the petitioner-company seeks to incorporate through amendment is that the suit is liable to be dismissed in view of the statutory provision provided u/s 69(2) of the India Partnership Act, 1932. It is found by the trial Court that this plea is contrary to the stand taken by the petitioner-company in para 3 of the written statement. In the previous written statement, the petitioner-company had averred that this para of the plaint is denied for want of knowledge and respondent-plaintiff be put to strict proof to prove the same. Another amendment which the petitioner-company wishes to incorporate is that the suit property was purchased by it as bonafide purchase for a value consideration. This, according to the petitioner-company, would go to the root of the matter. It is highlighted that respondents No. 1 to 4, who are plaintiffs, have nowhere in the entire plaint pleaded that the petitioner-company had ever colluded with other defendants while entering into the tripartite agreement.

5. Mr. Arun Palli learned Senior Counsel appearing for the petitioner has referred to number of judgments to urge that courts are extremely liberal in granting amendment of the pleadings and this can be allowed at any stage. He would further submit that the powers of court are wide enough to permit amendment of the written statement, wherein even an alternative plea can also be allowed to be introduced by way of amendment. The Learned Counsel has also referred to various judgments to say that it is open for a party to explain admission by seeking amendment in the written statement.

6. Amendment in the written statement even can be allowed to take inconsistent plea which may not be so permissible in case of amendment of a plaint.

7. On the other hand, Mr.I.K.Mehta, learned Senior Counsel representing respondents No. 5 to 7 would say that amendment if allowed would amount to

withdrawing the admission which the petitioner had made in the previous written statement filed on their behalf and as such the same has been rightly declined by the trial court. According to the Counsel, when averments of the plaint are "denied for want of knowledge", it is an evasive denial and shall amount to admission of the relevant facts pleaded in the corresponding paras of the plaint. In support of his submission, the Counsel has placed reliance on *The State of Punjab v. Gurmeh Singh and Anr.* 2003(1) PLJ 533. The Learned Counsel would also place reliance on *Jahuri Sah and Ors. v. Dwarika Prasad Jhunjhunwala and Ors.* AIR 1967 109. In this case, the Hon'ble Supreme Court has observed that to say that defendant has no knowledge of the facts pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. The Counsel seeks support from the case of *Surjeet Singh v. Kartar Singh (deceased) Rep.by L.Rs. and Anr.* 1987 P.L.J. 184 to urge that averment admitted in the written statement by saying that particular para to be correct would leave no scope of doubt that averment correctly made in the plaint and correctly not denied in the written statement, then such admissions cannot be allowed to be withdrawn by way of amendment. Reference is also made to the case of *Heera Lal v. Kalyan Mal and Ors.* 1998 HRR 120. It is observed in this case that the defendant withdrawing admission made in the written statement, which is likely to cause irretrievable prejudice cannot be subsequently permitted to withdraw the admission.

8. The need to have a debate on the scope of amendment that too an amendment of a written statement is limited. By various authorities/pronouncements, the scope of amendment of a plaint and a written statement is almost fully settled. The amendment of pleadings is regulated by provisions of Order 6 Rule 17 CPC, which read as under:

17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. The Hon'ble Supreme Court has recently gone into the entire scope of amendment of pleadings in the case of *Rajesh Kumar Aggarwal and Ors.V. K.K.Modi and Ors.* 2006(2) R.C.R. (Civil) 577. It is observed that it is mandatory on the court to allow all amendments which are necessary for the purpose of determining the real questions in controversy between the parties. The Court is not required to go into the correctness or falsity of the case at the time of considering the application for amendment. It is also not required to record a finding on the merits of the amendment. It is further observed in this case that

Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the large interest of doing full and complete justice to the parties before the Court. It is noticed that Order 6 Rule 17 consist of two p Articles The first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second party, however, has been found to be imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. In *M/s Ganesh Trading Co. v. Moji Ram* (1978) 2 SC 91, the Hon"ble Supreme Court has observed that the amendment sought is to give notice to the defendant on the facts which the plaintiff would and could have tried to prove in any case. Such notice was given only by way of abundant caution so that no technical objection can be taken that what was sought to be proved was outside the pleadings. In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, , the Hon"ble Supreme Court observed "that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules or procedure. It is further observed that the court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder he had caused injury to his opponent which may not be Civil Revision No. 6056 of 2006 : 8 : compensated for by an order of costs. It is then observed that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In *Ragu Thilak D.John v. S.Rayappan and Ors.* 2001(2) SCC 472, it is observed that the change of nature of suit as originally filed cannot be a reason for refusing the application for amendment because dominant purpose of Order VI Rule 17 is to minimise litigation. Reference here can also be made to the case of *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, , where it is observed as under:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and This Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

10. Mr.Palli has also placed strong reliance on the case of *Baldev Singh and Ors.v. Manohar Singh and Anr.* 2006(3) R.C.R. (Civil) 844. In this case, the Hon"ble Supreme Court has observed that amendment in written statement may be allowed to take inconsistent plea but may not be so allowed in case of plaint.

In this case only it is held that it will be open to a party to explain admission by seeking admission in the written statement. In Baldev Singh's case (supra), the Hon'ble Supreme Court has made reference to a decision of Privy Council in Ma Shwe Mya v. Maung Mo Hnaung AIR 1922 P.C. 249, wherein it is held as under:

All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.

11. It can, thus, be seen that while allowing amendment, the courts are required to be extremely liberal in granting the prayer and as observed by the Privy Council in Ma Shwe Mya's (supra), the amendment should be allowed unless serious injustice or irreparable loss is caused to the other side.

12. The primary objection taken by Mr.Mehta to oppose the prayer of the petitioner is that the amendment if allowed would allow the petitioner to withdraw his admission which he had earlier made. That in itself, in my view, would not be valid reason to deny the prayer of amendment sought by the petitioner. It has been held by the Hon'ble Supreme Court in the case of Baldev Singh (supra) that it is open for a party to explain the admission by seeking amendment in the written statement. It may also be noticed that consideration for allowing amendment of the plaint and allowing amendment in the written statement is different. Amendment in the written statement may be allowed even to take inconsistent plea which cannot be so allowed in the plaint. Even inconsistent plea can be allowed to be taken by way of amendment. What is required to be seen in all such cases is whether such amendment would lead to any prejudice to the other side or not. Amendment can even be allowed at a belated stage. In Baburao v. Maharashtra Insecticides Limited and Ors. 2004(2) CCC 473 (Bom), it is held that the amendment can be allowed at any stage of the proceedings including when the case is reserved for judgment. As held in Jai Jai Ram Manohar Lal's case (supra), the amendment cannot be refused because of some mistake, negligence or inadvertence. The primary aim to see is that the proposed amendment should not lead to any injustice to the other side or should not result in any prejudice to the opposite party. In Kehar Singh v. Balraj Singh and Ors. 1991 CCC 419, This Court held that it is always open to a party to show that the admission was wrong. It is further observed that if the plaintiff is not given an opportunity to back out of the wrong admission, he would not be able to show that the admission was wrong and accordingly amendment was allowed in this case.

13. The admission which is highlighted by the Learned Counsel for the respondents to oppose the amendment is not in that sense a positive admission made by the petitioner. The facts, as pleaded in para 3 of the plaint in regard to

ownership, could generally be not in the knowledge of the petitioner and reply to this that the same is denied for want of knowledge would not in that strict sense amount to admission. The petitioner at the same time pleaded that the plaintiffs be put to strict proof. It may not be denial of fact. It may not even be implied denial, but it cannot be construed to be a positive admission. This case cannot be equated with the case of Surjeet Singh (supra), referred to by the Learned Counsel for the respondents where in reply to particular paragraph it was stated that the same is correct. To allow amendment of this admission, which is now sought, would certainly invite different consideration. In any case, even if this averment is construed to be an admission, still it can be explained by way of amendment. It is not very un-usual to allow amendment of a written statement even to explain admission as has been noted above. In Kehar Singh's case (supra), This Court has observed that unless a party is given opportunity to back out of the wrong admission, he cannot show that the admission was wrong. Amendment in this case was allowed.

14. Having regard to these facts, I am of the considered opinion that this amendment would not cause any prejudice or injustice in this case. This amendment appears to be determining the real question in controversy between the parties. Adopting liberal approach as advocated by various judgments noted above and specially seeing that the same would not result in any serious injustice or irreparable loss to the respondents, I am inclined to take a view that the application seeking amendment has been wrongly declined by the trial court. The amended provisions of Order 6 Rule 17 CPC whereby the amendments after commencement of the trial are to be allowed, if it is found that inspite of due diligence the party could not raise the plea at the time of commencement of the trial may also not stand in the way of the petitioner. It can be seen that it has come to notice of the petitioner at the time of leading evidence that this legal plea could not be taken earlier and in that sense it can be said that the petitioner was not able to take this plea inspite of due diligence on an earlier occasion.

15. The present petition is accordingly allowed. The impugned order is set-aside. The application seeking amendment filed by the petitioner shall stand allowed. The amended written statement placed on record by the petitioner is permitted to be placed on record and the trial court would continue with the proceedings in accordance with the provisions of law thereafter.