
(1983) 01 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 938 of 1982

M/s Lal Chand Balwant Rai and others	APPELLANT
Vs	
M/s Harnarain Dass Gharsi Ram and another	RESPONDENT

Date of Decision : 10-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1983) 01 P&H CK 0076

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : S.K. Pipat, for the Appellant; Salil Sagar, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—The plaintiff-respondent firm was allowed to amend the plaint on payment of Rs. 150/- as costs vide order dated September 2, 1983. The said order reads,--

Costs paid and accepted under protest Amended plaint filed. For amended written statement, if any, to come up on 18th September, 1981

By virtue of the said amendment, the plaintiff changed the date of the borrowing of Rs. 13,000/- from February 20, 1972 to February 20, 1970. Amended written statement was filed to the said amended plaint in which the petitioners took certain preliminary objections which were not taken by them in the written statement filed earlier Objections to those pleas were taken by the plaintiff and the trial Court after hearing the parties came to the conclusion that no additional plea beyond the scope of the amended plaint could be allowed and consequently directed the petitioners to file the written statement, if any, to the extent of the amended plaint filed by the plaintiff. Dissatisfied with the same, they have come up in revision to this Court.

2. The learned counsel for the petitioners contended that whenever the plaint is, amended, the defendant is entitled to file the written statement and therein he

can take certain other pleas also which were not taken by him earlier and that there is no bar in taking these additional pleas in the amended written statement. In support of his contention, the learned counsel relied upon *Girdharilal Vs. Krishan Datt*, *New Bank of India Ltd. Vs. Smt. Raj Rani and Another*, and *Jagdish Parshad v. Dhensi Ram* (1977) 79 P.L.R. 670 . Reference in this behalf was also made to *Ganesh Trading Co. Vs. Moji Ram*,

3. After hearing the learned counsel for parties, I find force in the contention raised on behalf of the petitioners. The trial Court passed the impugned order relying upon *Mittar Sain v. Ram Dass* (1978) 80 P.L.R. 145. However, the decision in this case is clearly distinguishable. It is clear from paragraph 2 of the report in the said case that two facts were patent therein. The amendment of the plaint related to the clerical error in the number of the rectangle of the suit land and that, that had been sought to be amended after having (sic) the decree and during the pendency of the appeal by the defendant. It was under these circumstances that the plea raised on behalf of the defendant in his amended written statement was not allowed to be taken. It was observed in the said case that in the facts and circumstances of the case the intents of justice require that the amendment to the written statement be confined to the amendment made in the Plaint. The matter was considered by a Division Bench of this Court in *Girdharilal's case* (supra), wherein it was held

There is no rule of law, statutory or otherwise, which restricts or limits the defendant when he is called upon to file a written statement to an amended plaint, to contest the plaintiff's claim to any particular pleas. The general scheme of the CPC and the policy underlying the law of pleadings does not suggest that the new written statement should be confined and restricted to the amended portion of the plaint and should not contain any other additional plea. The question does not appear strictly speaking, to be one of amendment of the first written statement which could only be effected with the permission of the Court; it really pertains more to the right of the defendant to contest the suit as made out in the amended plaint read as a whole.

The law relating to pleading should not be construed and applied with undue rigidity and strictness if no prejudice or embarrassment toward, fair trial of the suit is caused. It would of course, be open to the Court to consider whether or not being an afterthought the pleas in question lacked merit, but the right of the defendant to raise the new pleas could hardly be negated by reference to the provisions of Order 6 rule 17 only.

The sole object of the pleading is to see whether the parties differ, and that each side may be fully alive to the question that are about to be argued, so that they may adduce all appropriate evidence, and if thus object has been achieved, then to rule out the amended pleading would tend to defeat, instead of promoting, the cause of justice, for serving which alone the rules of Procedure exist.

The ratio of the above-said decision was followed in *Smt. Raj Rani's case*

(supra). The same view was taken by Narula, C.J., in Jagdish Parshad's case (supra). No judgment taking a contrary view has been cited at the bar.

4. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside and the petitioners are allowed to file the amended written statement as desired by them. The parties through their counsel have been directed to appear in the trial Court on January 31, 1983.