
(1983) 01 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3012 of 1982

Smt. Deep Kaur

APPELLANT

Vs

Shri Ravi Kumar Aggarwal

RESPONDENT

Date of Decision : 06-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7

Citation : (1983) 01 P&H CK 0075

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Sarwan Singh, for the Appellant; R.L. Luthra, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The plaintiff Ravi Kumar Aggarwal had filed a suit for mandatory injunction. On the application of the plaintiff the plaint was allowed to be amended to convert it into a suit for specific performance. The defendant Deep Kaur was then permitted to file an amended written statement. This was done but before issues had been framed in his matter, an application was filed under Order 6 Rule 7 of the CPC by the defendant seeking permission for amendment of the written statement. This application was declined on the ground that the proposed amendment would virtually permit the defendant to set out an entirely new case with mutually destructive pleas. It is this order which has been challenged in revision.

2. The provisions of Order 6 Rule 17 of the CPC confer a wide discretion upon the Court in the matter of the amendment of pleadings and it is now well settled that the powers under this Rule should be liberally exercised to advance the interests of substantial justice. The present case was an eminently fit one for the exercise of such discretion, particularly keeping in view, the fact that the amendment had been sought at the very initial stage of proceedings with issues not having yet been framed and there thus being no undue delay either. Counsel for the plaintiff could point to no such injustice that would be caused to the plaintiff by the

amendment prayed for being allowed as could not be compensated by costs. In dealing with this matter it would be relevant to advert to the observations of the Supreme Court in *M/s Ganesh Trading Co, v. Moji Ram* (1978) 80 P.L.R. 458 which are reproduced hereunder :--

Provisions for the amendment of pleadings subject to such terms as to costs and giving to all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the short coming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

It is to be noted that there is no question here of the amendment in any manner impinging any accrued right of the plaintiff Ample opportunity would be available to the plaintiff to meet the case as the defendant seeks to set out in the amended written statement.

3. Counsel for the plaintiff sought to rely upon *Girdhari Lal v. Girdhari Lal* AIR 1978 J. & K. 47, in seeking to oppose the prayer for amendment to the written statement in the present case. This authority is clearly of no avail. The amendment here was sought for the first time in the appellate Court. The written statement in this case had been filed in October, 1974, the suit concluded in September, 1976 and in the same month the appeal was filed. The amendment in the written statement was sought in April, 1977 and in the amendment a new case based on fraud was sought to be set out. The amendment was declined for the reason that the plaintiff would thereby be deprived of the valuable right which had already accrued to him. The present case, on the other hand, as has been mentioned above is at the very initial stage of the trial and there is no accrued right of the plaintiff which would be defeated thereby.

4. For the reasons set out above, the impugned order is hereby set aside and the defendant is allowed amendment of the written statement as prayed for by her. The amendment is, however, allowed subject to payment of Rs. 100/- as costs. Costs of this revision petition shall be costs in the suit.

5. The parties are directed to appear before the trial Court on 1st February, 1983.