

Dittu Ram Vs. Amar Chand

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Court : Himachal Pradesh

Decided On : May-10-1961

Reported in : AIR1961HP46

Judge : C.B. Capoor, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rules 7 and 17 - Order 8, Rule 9

Appeal No. : Civil Revn. No. 24 of 1960

Appellant : Dittu Ram

Respondent : Amar Chand

Advocate for Def. : K.C. Pandit, Adv. for; M.L. Aukta, Adv.

Advocate for Pet/Ap. : R.N. Malhotra, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

C.B. Capoor, J.C.

1. This application in revision by Dittu Ram is directed against an order of Shri T.C. Rewal, the then Senior Subordinate Judge, Mahasu.

2. The respondent had filed a suit for rendition of accounts and dissolution of partnership against the petitioner. Subsequent to the filing of the written-statement, leave to amend the plaint was granted and an amended plaint was put in on 30-5-1960 and the petitioner was required to file a written-statement by 20-6-1960. A replication was filed by the respondent and an objection was raised that the petitioner had in the supplementary written-statement put forward pleas which were inconsistent with some of the pleas put forward in the written-statement initially filed and were foreign to the fresh matter introduced on amendment of the plaint. That objection prevailed with the learned trial Court and by the order sought to be revised the new and inconsistent pleas raised by the petitioner were directed to be ignored.

3. A preliminary objection has been raised on behalf of the respondent that the application in revision does not lie. I, however, do not propose to go into that objection as the application in revision does not appear to have merits.

4. The short question that arises for decision is as to when after the filing of the written-statement a plaint is amended it is within the rights of the defendant to raise pleas inconsistent with those which had been raised in the earlier written-statement without obtaining permission of the Court for the purpose. There is no specific provision in the Code governing the aforesaid question and it has therefore to be decided in accordance with justice, equity and good conscience deriving assistance from the other provisions contained therein.

5. Order 6, Rule 7 of Civil Procedure Code enjoin that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. It would thus appear that if leave to amend the plaint had not been accorded to the plaintiff-respondent it would not have been open to the petitioner to amend the written-statement without permission of the Court.

When fresh matter is introduced in the plaint as originally filed the only right which a defendant can justly claim is that an opportunity be afforded to him to put forward his pleas with regard to the fresh matter introduced. It would be a violation of the principles of pleadings and in particular of Order 6, Rule 7 of the Civil P. C. if

on amendment of the plaint a defendant is allowed to put forward pleas which are not in answer to the fresh matter introduced by amendment of the plaint and are inconsistent with the pleas previously put forward.

6. Strictly speaking, on amendment of the plaint a defendant should be allowed an opportunity to file additional written-statement in answer to the amended portion of the plaint only. But even if he is required to file a written-statement in answer to the amended plaint he cannot have a right to give a go-by to the pleas raised by him in the former written-statement unless it be necessary to do so in answer to the fresh matter introduced on the amendment of the plaint.

The written-statement should contain the reply to the new matter introduced on amendment of the plaint and the pleas which had been raised previously in answer to the unamended portion of the plaint. In other words, the amendment of the plaint does not give rise to a licence to the defendant to travel beyond the scope of the amended portion of the plaint and wriggle out of the defence previously set up in answer to the unamended portion of the plaint.

7. Mr. Justice Kapur (now a Judge of the Supreme Court) had observed in *Watkins Mayor & Co. Jullundur City v. Registrar of Trade Marks, Bombay*, 54 Pun LR 176: (AIR 1952 Punj 266):

'However negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated for by costs.'

Relying upon the aforesaid observations it was vehemently argued on behalf of the petitioner that doors should not be shut against him and that he should be left free to formulate his pleas in any form that he likes. The observations quoted above, if I may say so with respect, are unexceptionable and a party should have liberty to formulate his pleas in any manner and form that he likes. The question, however, is if having once formulated the pleas it is open to a party to give a go-by either wholly or partially to those pleas and put forward new and inconsistent pleas on the grant of leave to a plaintiff to amend the plaint. That question has not been

considered in the aforesaid Punjab case. A provision namely Order 6 Rule 7 has been made in the Code allowing the parties to amend their pleadings and the petitioner may well avail of that provision if he wants to amend the portion of the written-statement in answer to the unamended portion of the plaint.

8. The only reported decision brought to my notice in which the precise question arising for decision in the instant case has been considered is the one reported in *Girdhari Lal v. Krishan Datt*, AIR 1960 Punj 575. In that case the plaint was amended and in the supplementary written-statement that was filed some pleas were raised which according to the plaintiff were unauthorized and were not limited to the amended portion of the Plaint. Mr. Justice Dua, who delivered the judgment of the Court, made the following observations:

'I am unable to uphold this contention. In the first place 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 or the Code of Civil Procedure and the policy underlying the law of pleadings does not suggest any such restriction and the counsel has not been able to cite any precedent in support of his contention. Pleas in a written-statement to an amended plaint are not exclusively controlled or governed by the provisions of Order 6 Rule 17 of the Code, the provisions of Order 8 are equally--if not more--relevant and important in this connection.

In my view the question does not appear, strictly speaking, to tie 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 pleadings should not be construed and applied with undue rigidity and strictness if no prejudice or embarrassment towards 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 negatived by reference to the provisions of Order 6 Rule 17 only.' Those observations no doubt lend support to the contention

advanced by the Petitioner. A perusal of the judgment, however, indicates that the new pleading was not considered by their Lordships to be foreign to the new matter introduced in the plaint. They said:-

'Besides, it is not shown as to why could the defendant not resist, even the new amended relief claimed by the plaintiff, by pleading that the property had been purchased for his benefit and had thus been thrown into the common stock. On no reasonable ground could the defendant be prohibited or debarred from urging the new plea in answer to the new relief.'The observations made by their Lordships in the earlier portion of their judgment may well be regarded in the nature of obiter dicta. Another point of distinction is that in the aforesaid case no objection was taken in the trial Court that new and unauthorized matter had been introduced in the written statement subsequently filed. With great respect to their Lordships, I find myself unable to subscribe to the view that if a plaint is amended the defendant can file a written-statement containing pleas foreign to the amended portion of the plaint and at variance with the pleas put forward in the former written statement.

9. The proposition that the right of the defendant to raise new pleas in the written-statement filed in reply to an amended plaint should not be negatived as it would always be open to the Court to consider whether being an afterthought the new pleas lacked merit or not does not appear to be sound. Pushed to its logical conclusion the aforesaid proposition will lead to the consequence that a party can amend his pleading without the permission of the Court but this position is not countenanced in law and O. 6 R. 7, Civil Procedure Code specifically provides that a previous Pleading cannot be departed from without the permission of the Court.

While I agree that a Court should be liberal in (allowing a party leave to amend the pleadings, I do not think that a party has a right to amend a previous pleading without the permission of the Court. There is nothing in Order 8 of Civil P. C. to justify a contrary view. According to Rule 9 of that Order, a Court has the power at any time to require a written-statement or additional written-statement from any of the parties but a Court which holds the scales even between the parties will not countenance the raising of pleas which are not in reply to the amended portion of

the plaint and are also inconsistent with the pleas raised in the former written-statement in answer to the unamended portion of the plaint.

When a plaint is allowed to be amended after the filing of the written-statement by the defendant the intention of the Court in requiring a written-statement is and should be deemed to be that the written-statement should be confined to the fresh matter introduced by the amendment. My opinion, as already observed, is that if a plaint is allowed to be amended after the filing of the written-statement by the defendant the additional written-statement that may be filed by the defendant after the amendment of the plaint should be confined and limited to amended portion of the plaint only. If, however, the pleas which, were previously raised in answer to the unamended portion of the plaint are sought to be amended recourse must be had to the provision of law contained in Order 6, Rule 17, Civil P. C.

10. It has also been urged on behalf of the petitioner that the order of the Court below directing certain pleas raised in the subsequent written statement to be ignored was in contravention of Order 6, Rule 16 of Civil Procedure Code, and as such was not sustainable. The raising of new pleas inconsistent with the previous pleadings without the permission of the Court undoubtedly tends to delay and embarrass a fair trial of a case and even though the learned Judge of the Court below has not specifically mentioned that provision of law I have no doubt that it was in its mind when it made its order.

I am further of the opinion that even if the aforesaid provision is not applicable to the instant case the Court had the inherent power to make the order in question to secure the ends of justice. If a party files a written-statement either wholly or partially inconsistent with a previous written-statement without obtaining the permission of the Court the Court cannot but ignore such a written statement.

11. In conclusion, the application in revision fails and is hereby dismissed with costs.