



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 18th April, 2023**
Pronounced on: 12th June, 2023

+ CS(OS) 252/2013

YOGESH KUMAR Plaintiff

Through: Mr.Noor Alam, Advocate
(Through VC)

versus

DAVENDER KUMAR RELAN AND ORS Defendants

Through: Mr. Himanshu Bajaj, Advocate for
D-1 to 9

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

I.A. No. 11118/2020 (under Order VI Rule 16 CPC)

1. The instant application under Order VI Rule 16 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of applicant/plaintiff seeking the following relief:-

"It is therefore most respectfully prayed that in the interests of justice, this Hon'ble Court may kindly be pleased to strike off the pleadings in the written statement dated 04/12/2019 which have been pointed out by the applicant /plaintiff in para 6 of this application: and Pass such other/further orders in favour of applicant/plaintiff as deemed fit and proper in facts of the case."



FACTUAL MATRIX

2. The material facts of the instant application are that the applicant was allowed to amend the plaint while allowing IA No. 10184/2019 by the Coordinate Bench of this Court. The amendments allowed by the Court were enumerated in paragraph 40(A) to 40 (I) of the amended plaint dated 17th July, 2019.

3. The defendants filed a written statement dated 04th December, 2019 to the amended plaint, wherein they ought to have replied to the newly added paragraphs in the amended plaint. It is alleged that the defendants, instead of filing written statement only with respect to the amended portion of the plaint, chose to file a fresh written statement incorporating new paragraphs and contents in place of their previously filed written statement, without seeking the permission or leave of the Court. The defendants have chosen to incorporate changes corresponding to the paragraphs which were not amended in the plaint.

4. It is further alleged by the plaintiff that the unwarranted changes in the written statement are prejudicial to the plaintiff as these are an afterthought of the defendants and many admissions of fact are being attributed to the plaintiff. The amendment application bearing I.A. No. 9752/2014 was allowed by the Coordinate Bench of this Court vide order dated 22nd May, 2015 and amended written statement dated 7th May, 2014 was taken on record. It is alleged that in garb of this written statement to amended plaint, again some new facts and defences have being incorporated without permission of the Court. Hence, the instant application has been filed on behalf of applicant/plaintiff.



SUBMISSIONS

(on behalf of the applicant/plaintiff)

5. Learned counsel appearing on behalf of applicant/plaintiff submitted that the unwarranted additions/alterations in the written statement to amend the plaint are mentioned in Paragraph 6 of the instant application, which are reproduced hereinbelow:-

"(i) Para 1 of preliminary objections has the following addition:

"The said submission is fortified by the recent and startling revelation in the criminal investigation pending against Plaintiff vide FIR 182/2018 PS Neb Sarai;"

(ii) Para 1 of the preliminary objections has the addition of sub-paras (a) to (h).

(a) That the Hon'ble Court may kindly consider that the alleged/forged agreement which forms the foundation of the present Civil Suit had never been executed and the plaintiff, has forged the same and it is for that reason that the plaintiff has never filed the original agreement as no such agreement exists.

(b) That aggrieved by the act of forgery and fraud committed by the plaintiff, the defendants filed a criminal complaint Chandrakanta Relan. Vs. Yogesh Kumar & Ors against the plaintiff and his accomplices in view of the blatant forgery committed by the plaintiff.

(c) That after a detailed hearing, vide order dated 27.4.2018, the Ld. M.M. South was pleased to pass orders under Section 156(3) Cr. P.C. and directed registration of FIR against the plaintiff herein and the said order culminated in FIR 12/2018 PS: Neb Sarai.

(d) That aggrieved by the lack progress in investigation of the said FIR, the defendants herein again approached the Court of Hon'ble M.M. U/S



156 (3) Cr. P.C. for monitoring progress of the investigation.

(e) That vide status report filed by the Ld. I.O. on 04.11.2019; it has now been revealed that stamp paper bearing no. 42AA667745 of Rs. 10 i.e. page 2 of the forged agreement to sell dated 15.05.2011 was actually issued to the stamp vendor from the treasury Tis Hazari on 06.06.2011 and therefore the same could not possibly have been used to enter into, an agreement or for any other purpose on 15.05.2011 as the said stamp paper was not in circulation on the said date. The status report categorically refers to the alleged agreement dated 15.05.2011 as "forged and fabricated".

(f) That it is an admitted position on behalf of the plaintiff in the present proceedings as well as criminal investigation and proceedings that he himself purchased stamp paper used in the alleged agreement to sell dated 15.05.2011 and ht said agreement was executed on 15.05.2011 at D-54, Kaikaji, New Delhi on 15.05.2019.

(g) That it can therefore safely be inferred that the alleged photocopy agreement to sell dated 15.05.2011 which forms the very foundation of the present suit is a forged and fabricated document as no such document could possibly have been executed on a date which is anterior to the date of issuance of stamp paper by the treasury.

(h) That in view of blatant forgery committed which is apparent on the face of record, the maintainability of the present suit has not be tested and a preliminary issue is required to be framed and decided before the suit can proceed any further.

(iii) The Para 2 of the preliminary objections is a new paragraph.

(iv) As a result of addition of new para no. 2 in preliminary



objections, the numbering of paragraphs 2-9 is now changed to paras 3-10

(v) The para 10 of old written statement has been done away with.

(vi) The para 11 of preliminary objections is a new paragraph.

(vii) The para 12 of the new written statement corresponds to para 11 of the old written statement but there are certain additions. The para 12 of the new written statement contains addition of the words "in view of above" "forgery" and "further the legal heirs of the erstwhile defendant no. 3 already stand substituted however Defendant no. Shri Nand Lai Hurria has since expired and therefore suit is not maintainable qua defendant no. 4 on that ground. Further, Defendant no. 10 has been residing permanently in Australia for many years and she is likely to adopt the WS filed by the answering defendants as per information received from other legal heirs."

(viii) Para 14 of the old written statement referred to defendants no. 4-7 whereas the new written statement says "defendant no. 5-7 and late Ms. Saroj Bala".

(ix) Para 16 of new written statement has changes in the last sentence as the last sentence now reads as "The property bearing no. D-54, Kalkaji, New Delhi, was already mutated only in MOD, however the same was not done at Tehsil."

(x) In para no. 17 opening words have been changed and now reads as "Mr. Bal Krishan assigned the job of mutation assigned to Shri Param Preet Singh during the month of Oct 2010 for the property - plot of land admeasuring 4 Bighas 8 Biswas in Khasra No. 288, Khanpur which is also known as Sainik Farm, New Delhi."



(xi) *In Para 23 there has been addition in the middle of paragraph by adding "especially in the light of the fact that the stamp paper at internal page no. 2 of the forged agreement to sell was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police."*

(xii) *In para 25 name of Narender Bhatt has been added.*

(xiii) *In para 28 last sentence has been added as "In any event the claim of the plaintiff is belied by the fact that the fact that the stamp paper at internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police"*

(xiv) *In para 35 name has been corrected from "Nhagwan" to "Bhagwan".*

(xv) *In para 42 last sentence has been added which reads as "The plaintiff in this paragraph has specifically admitted purchase of stamp paper by him and the claim of the plaintiff is belied by the fact that the fact that the stamp paper at internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police"*

(xvi) *In para 43 addition has been made of the words "forged and fabricated" and "In any event the claim of the plaintiff is belied by the fact that the fact that the stamp paper at internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police"*

(xvii) *In para 44 last sentence has been added which reads as "in any event the claim of the plaintiff is belied by the fact*



that the fact that the stamp paper at internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police".

(xviii) In para 45 name of "Narender Bhatt" has been added.

(xix) In para 62 the words "and marked as Annexure R-3(Colly)" have been deleted.

(xx) In the middle of para 65 a sentence has been added as "in any event the claim of the plaintiff is belied by, the fact that the fact that the stamp paper at internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police.". The words "forged and fabricated" have also been inserted.

(xxi) In para 68 last sentence has been added as "In any event the claim of the plaintiff is belled by the fact that the fact that the stamp paper at Internal page no. 2 of the forged agreement to sell which was admittedly purchased by him was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police.".

(xxii) In para 69 last sentence has been added as "The agreement to sell dated 15th May, 2011 which is annexed with the plaint is forged and fabricated and needs to be investigated in light of the fact that the stamp paper at Internal page no. 2 of the forged agreement to sell was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police.".

(xxiii) In para 70 words "herewith and marked as Annexure R-1" have been replaced with words "with list of documents" and last sentence has been added as "It is upon the orders



qua registration of FIR u/s 156(3) that the FIR bearing no. 182/2018 came to be registered and it is during the course of monitoring of FIR 182/2018 that the Police filed the status report wherein it was clarified that the Agreement to Sell dated 15th May 2011 which is annexed with the plaint is forged and fabricated in light of the fact that the stamp paper at internal page no. 2 of the forged agreement to sell was not even in circulation on the said date i.e. 15.05.2011 as per status report dated filed by Delhi Police."

6. Learned counsel appearing on behalf of applicant/plaintiff submitted that it is apparent that defendants have treated this as an opportunity to illegally incorporate new facts in those paragraphs of this newly filed written statement in which corresponding paragraphs of the plaint were not amended. Even the changes are not depicted in italics or bold font and it has taken a huge effort to find out the changes which have been incorporated clandestinely.

7. It is further submitted that the unwarranted changes in the written statement are prejudicial to the plaintiff as these are after-thought of the defendants and many admissions of fact are being attributed to the plaintiff, which he never admitted. In fact, the defendants are constantly trying to buffer up their defence by incorporating fictitious and concocted allegations.

8. Learned counsel appearing on behalf of applicant/plaintiff submitted that, therefore, the changes in the written statement enumerated above are liable to be struck off from the written statement dated 4th December, 2019 and the defendants be directed to file a proper written statement to the amended plaint. It is therefore, prayed by the



plaintiff that the present application may be allowed for proper adjudication of the suit.

(on behalf of Non-applicants/Defendants)

9. *Per Contra*, learned counsel appearing on behalf of non-applicant/defendants vehemently opposed the averments made by the learned counsel for the applicant/plaintiff and submitted that the present application has been filed with the sole objective/purpose of harassing the defendants. It is further submitted that there are no grounds available to the applicant/plaintiff for allowing the instant application. The instant application is nothing but an abuse of the process of law. Hence, the application is devoid of any merit and is liable to be dismissed.

FINDINGS AND ANALYSIS

10. Heard learned counsel for the parties and perused the record.

11. The provision of law under which the present application has been filed is reproduced as under:

*"Order VI Rule 16-
Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—*

(a) which may be unnecessary, scandalous, frivolous or vexatious, of

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court."



12. Keeping in view the arguments advanced by learned counsel for the parties and contents made in the instant application the following issues have been framed for adjudication:

- a. Whether the amendments and alterations made by the defendants in their written statement are violative of the rules of pleadings and are subject matter of object of this Court under Order VI Rule 16 of CPC?
- b. Whether all the amendments made by the defendants are unnecessary?

Issue a) Whether the amendments and alterations made by the defendants in their written statement is violative of the rules of pleadings and is a subject matter of object of this Court under Order VI Rule 16 of CPC?

13. So far, it has been established that the Courts in exercise of their power under Order VI Rule 16 of CPC have sufficient reach to grant permission for amendment of pleadings, be it a plaint or a written statement. The Courts, on various occasions, have confidently narrated that the defendant does have a right to get the relief of amendment of written statements. It is to be noted that the same principles apply to amending the written statements as to amending the plaint. In instances where prejudice is less likely to play a role, the Courts have taken a more lenient view in permitting the amendment of a written statement.

14. Further, the right of the defendant to enter an alternative plea in defence is subject to the conditions that the proposed amendment does not subject the opposing party to inequity and that any admission made in



favour of the plaintiff is not revoked. All amendments to the pleadings that are necessary for facilitating resolution of the actual issues in the case should be permitted, provided that the proposed amendment does not alter or substitute the original cause of action or defence. Inconsistent and contradictory factual allegations that negate the confessed position of the facts or factual allegations that are mutually destructive should not be permitted to be amended into the pleadings. The proposed amendment should not result in a disadvantage for the opposing party that cannot be compensated by costs. No amendment should be permitted that defeats a legal right accruing to the other party due to the passage of time. The delay in filing the petition for amendment of the pleadings should be appropriately compensated by costs, and if the error or blunder is not fraudulent, it should not be a basis for rejecting the application for amendment of the plaint or written statement. Considering the above said, it would not be incorrect to say that the issue of law on the point that whether a party can be allowed to amend its pleading which is a written statement in the present case, is clear and well established. The Courts have the power to allow such relief as prayed for before it.

15. If I am to focus on the exact issue of law involved here, that whether the defendant can be allowed to amend its written statement as in it becomes new written statement with changes incorporated which are beyond and not corresponding to only the amended portion of the plaint and the same has been done without the due permission of Court.

16. As alleged by the applicant/plaintiff and after perusing the records available, the amended written statement has been filed after the amendment of plaint is allowed. But, the defendants have amended its



written statement in such a way that not only the corresponding paragraphs with respect to the amended portion of plaint is altered, which by far is tenable and permissible. But, other such content which does not correspond to the amended plaint is also altered, modified, edited and redrafted.

17. Taking into account the issues involved, allegations and documents, it is sufficient to say that the allegations levelled by the plaintiff upon the defendants are found to be true. The defendants have, to some extent, amended its written statement beyond the scope of permissible limits. It is found that various paragraphs have been added, altered, edited, removed and omitted in the written statement which are not corresponding to the amended plaint filed on behalf of the plaintiff.

18. The rule and the observation of Courts w.r.t the grant of leave to amend the pleadings is clear. The amendment of pleading can be allowed, but only on an application under Order VI Rule 17 of CPC. The same is considered to be within the four corners of law. But, as it has been seen in the present matter, the defendants have amended its written statement beyond the scope of law defined in Order VI Rule 16 of CPC. The amendments done which are beyond the corresponding amendments of the plaint causes prejudice and embarrassment. It disturbs the fair trial of the suit as it gives the defendants an undue advantage over the plaintiff since the defendants have included new defences and information which were not present in their original written statement before. The defendants have, very cleverly and frivolously, omitted its written statement without obtaining the due permission of law.



Issue b) **Whether all the amendments made by the defendants are unnecessary?**

19. Order VI Rule 16 of CPC permits the Court, at any stage of the proceedings, to strike out any contents / submissions / contentions in the pleading which may be unnecessary, scandalous, frivolous, vexatious or prejudicial or otherwise appears to be an abuse of the process of the Court.

20. Considering the above mentioned observations, it is finally analyzed that the defendants in the present case, have acted in *malafide* and that their blunder has caused injury to his opponent which can be compensated for by an order of cost. It is clearly a negligence, inadvertence or even infraction of rules of procedure on their part. The Court might have taken a sympathetic stand in case the defendants had followed the due process of law for amendment of pleadings.

21. The statements in paragraph No. 5 are the omitted, edit and altered statements are carried from the new written statement filed by the defendants. Comparing the same with amended plaint and old written statement, it seems that some of the alterations done by the defendant are done by way of concealing and hiding it in plain sight. New and fresh facts and defences have been included which are not just corresponding to the amended paragraphs of the plaint.

22. Further, the same is believed to be done to hamper the arguments and merits of the plaintiff as the plaintiff will be left with no option to respond to the new defences and facts narrated by the defendants in its written statement. This implies the intention of the defendants to be



malafide as per the judgement of the Hon'ble Supreme Court in ***Mahila Ramkali Devi v. Nandram*, (2015) 13 SCC 132**. However, in sprit of the provisions and as per the observations of the Hon'ble Supreme Court in ***Abdul Razak v. Mangesh Rajaram Wagle*, (2010) 2 SCC 432**, the parties have the freedom to make appropriate averments and raise arguable issues until and unless they do not violate the statutory provisions. It is also necessary to consider the observation of a Coordinate Bench of this Court, wherein it was held that if the parties have not violated the rules of pleadings by making appropriate averments or raising arguable issues, the Court should not order the pleadings to be struck off. Considering the above, it can be concluded by saying that amendment of any pleadings is to be done only with the prior permission of the Court under Order VI Rule 17 of CPC, which is the general due process and is an important rule of pleadings prescribed in the CPC, any variation from that is a violation of the rules and statutory provisions.

23. At this stage and in view of the aforesaid observations, it becomes prudent to mention herein that although, the amendments made by the defendants are in violation to the statutory provisions and compliance that are ought to be met by any party praying the relief under the CPC but the due process of law has been undoubtedly followed by the defendants.

24. It is necessary to point out that the changes incorporated are somewhat related to the facts and statements mentioned in the plaint. The same are found to be necessary as it brings related facts and developments that might be necessary to decide upon the issues involved in the captioned suit. In furtherance to the observation of the Court, it is noted that if the necessary material on which the plea arising from the



amendment may be decided is already there, the amendment may be more readily granted than otherwise and that the Hon'ble Supreme Court in *Arun Jaitley v. Arvind Kejriwal*, 2017 SCC OnLine Del 12175, has observed that the power to strike out pleadings is extraordinary in nature and must be exercised by the Court with extreme care, caution and circumspection.

CONCLUSION

25. The pleadings in a suit are the first set of documents presented before the Court which pave the way for adjudication in the suit. The pleadings hold a great significance for the parties as well as the Court. Therefore, it is incumbent that the pleadings present all the necessary and relevant documents as well as all the contentions for the Court to properly adjudicate upon the *lis* between the parties.

26. In the instant application, the plaintiff has taken serious objections to the amended written statement sought to be filed and placed on record by the defendants. However, on perusal of the amended written statement, filed in reply to the amended plaint, at the first instance, the amendments carried out seem necessary for the adjudication of the instant suit. The question as to whether the arguments/contentions so raised by defendants in their amended written statement have any merit can be dealt with at a later stage when the suit is adjudicated by the Court, however, at this stage the amendments sought are necessary to be included into the pleadings.

27. Therefore, keeping in view the purpose of the provision and the mandate of law as reiterated by this Court as well as by the Hon'ble



Supreme Court, this Court is of the view that the defendants have followed the due process to amend their pleadings and the amendments sought are necessary for adjudication of the suit. There is no impediment at this stage to allow the amended written statement to be taken on record.

28. In view of the prayer made by the plaintiff, the Court is not inclined to strike out the pleadings as prayed because this Court finds them necessary as stated above. However, in view of the fact that the defendants have violated the rules of pleadings this Court is inclined to impose cost on the defendants as a deterrent, while taking the amended written statement on record.

29. Accordingly, the amended written statement of the defendant/non-applicant is directed to be taken on record subject to a cost of Rs. 25,000/- to be deposited in the name of "DHCBA Lawyers Social Security and Welfare Fund" within two weeks. The receipt thereof shall be furnished before the Registry of this Court before the next date of hearing in the captioned suit.

30. Accordingly, the instant application stands dismissed.

31. The judgment be uploaded on the website forthwith.

CS(OS) 252/2013

List on 18th July, 2023.

**(CHANDRA DHARI SINGH)
JUDGE**

JUNE 12, 2023

Dy/ms