

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**CM (M) No. 330/2023  
CM No. 7065/2023**

Reserved On: 31<sup>st</sup> of July, 2024.  
Pronounced On: 23<sup>rd</sup> of August, 2024.

**Ghulam Hassan Khanyari, Age: 82 Years**  
S/O Ghulam Mohi-ud-Din Khanyari  
R/O Gupt Ganga, Ishber, Nishat, Srinagar

**... Petitioner(s)**

**Through: -**

Mr Z. A. Shah, Senior Advocate with  
Mr A. Hanan, Advocate.

**V/s**

**Riyaz Ahmad Bhat**  
S/O Ghulam Mohammad Bhat  
Jabgari Pora, Nowhatta, Srinagar.

**... Respondent**

**Through: -**

Mr Zahoor Ahmad Shah, Advocate.

**CORAM:**

**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE  
(JUDGMENT)**

1. Through the medium of the present Petition, filed under Article 227 of the Constitution of India, the Petitioner has assailed the Order dated 25<sup>th</sup> of September, 2023 (for short "the impugned Order") passed by the Court of learned 1<sup>st</sup> Additional District Judge, Srinagar (hereinafter referred to as "the Trial Court") in the Suit filed by the Respondent herein titled '**Riyaz Ahmad Bhat v. Ghulam Hassan Khanyari & Anr.**', whereby the application filed by the Defendant No.1/ Petitioner herein seeking amendment of the Written Statement has been rejected.

2. The brief facts of the case leading to the filing of the instant Petition, as emerge from the perusal of the pleadings on record, are that the Plaintiff/ Respondent herein filed a Suit against the Petitioner herein and another person before the Trial Court, thereby seeking Decrees of Declaration, Ejectment, Possession and Mandatory Injunction, which is pending final adjudication before the Trial Court. On being put to notice, the Defendant No.1/ Petitioner herein appeared before the Trial Court and filed his Written Statement, however, after filing of the same, the Defendant No.1/ Petitioner herein is stated to have felt a need to supplement the said Written Statement with better particulars in order to allow the Trial Court to adjudicate the real controversy between the parties by filing an application under Order 6 Rule 4 of the Code of Civil Procedure (CPC).

2.1. The said application, however, came to be rejected by the Trial Court in terms of Order dated 17<sup>th</sup> of April, 2018, which Order was challenged by the Petitioner before this Court through the medium of Writ Petition bearing OWP No. 976/2018. This Court, in terms of Judgment dated 13<sup>th</sup> of July, 2022, rejected the said Petition filed by the Petitioner by holding that the application seeking to supplement the Written Statement of the Defendant No.1/ Petitioner herein was not in conformity with the mandate of Order 6 Rule 4 of the Code of Civil Procedure (CPC) and that the same, in fact, amounted to amendment of the Written Statement.

2.2. Consequently, the Petitioner claims to have taken recourse to the filing of an application before the Trial Court for seeking amendment of his Written Statement under Order 6 Rule 17 of the Code of Civil Procedure (CPC). The Trial Court, however, in terms of the Order impugned, dismissed the said application moved by the Petitioner seeking amendment of the Written Statement as well. It is this Order dated 25<sup>th</sup> of September, 2023 passed by the Trial Court that has been called in question by the Petitioner through the medium of the present Petition by invoking jurisdiction under Article 227 of the Constitution of India.

3. The impugned Order has been challenged by the Petitioner, *inter alia*, on the following grounds:

“A. Because, Order 6 Rule 17 of the Code of Civil Procedure confers wide discretionary powers upon the Court to allow either of the parties to amend their pleadings. This discretion is supposed to be exercised by combing the judicial mind with well established legal principles. In the instant case, the learned Court of 1<sup>st</sup> ADJ Srinagar has failed to exercise the power/ jurisdiction in the manner as laid down in the judicial principles laid and evolved by the Courts. The proposed amendment had neither incorporated new facts nor would have resulted in causing any prejudice to the Respondent. The Ld. Trial Court has thus failed to exercise the jurisdiction vested in it in accordance to the law. Impugned order is hence liable to be set aside;

B. Because, the restrictions and limitations attached to the amendment of a plaint are different and the restrictions and limitations attached to the amendment of a written statement stand on a different footing. In terms of the amendment sought by the Petitioner to his written statement, none of the admissions if any were sought to be withdrawn by way of the amendment. The Petitioner had only sought to extend explanation by way of placing additional facts before the Hon’ble Court for the purposes of proper adjudication of the real issues involved in the Suit of the Respondent. Impugned order having applied the restrictions attached to amendment of a plaint has thus committed an error of jurisdiction rendering the impugned order a nullity in law and amenable to be set aside;

C. Because, the Ld. Trial Court has failed to apply the test of objectivity of the amendment sought by the Petitioner to his Written Statement. Principle of law with respect to granting of an amendment and denial of an amendment is the discovery of real controversy in between the parties and to do complete justice between the parties. In the instant case, the Ld. Trial Court has failed and ignored to take note of the real controversy involved in the suit between the parties which was discernible in terms of the amendment sought by the Petitioner to his Written Statement. Impugned order passed by the Ld. Trial Court is rendered bad in law on this count also and hence is liable to be set aside;

D. Because, perusal of the impugned order would indicate and reveal that Ld. Trial Court has totally ignored the object of amendment sought by the Petitioner to his Written Statement. It is submitted that while rejecting the application for amendment, the Ld. Court of 1<sup>st</sup> ADJ Srinagar has applied the principles and restrictions applicable to the amendment of a Plaint to the

application of the Petitioner. Such an application is de hors the position of law and renders the impugned order liable to be set aside; and

E. Because, the Ld. Court of 1<sup>st</sup> Additional District Judge, Srinagar has misconstrued and erroneously applied the principle of Constructive Res-Judicata to the facts and circumstances of the case of Petitioner. It is submitted most respectfully by the Petitioner that Ld. Trial Court has misconstrued the Application filed by Petitioner under Order 6 Rule 4 of the Code of Civil Procedure with the application seeking amendment of Written Statement by the Petitioner. Hon'ble High Court while rejecting the challenge against the order of rejection of Application under Order 6 Rule 4 had not rejected the same being an application seeking amendment. The Petitioner, thus, was within his right to seek amendment under the appropriate and relevant provision of law. Impugned order hence suffers from illegality as such is liable to be set aside."

4. Objections stand filed on behalf of the Respondent in opposition to the present Petition, wherein it has been stated that the Petition filed by the Petitioner is not maintainable in view of the law laid down by the Hon'ble Apex Court in cases titled: (i) **'Shalini Shyam Shetty v. Rajinder Shankar Patil'**, reported as **'2010 AIR (SCW) 6387'**; (ii) **'Babu Bhai Jamandas Patel v. State of Gujarat & Ors.'**, reported as **'2009 (9) SCC 610'**; and (iii) **'Radhey Sham & Ors. v. Chhabi Nath & Ors.'**, reported as **'AIR 2015 (SC) 3269'**. It is further stated that the only aim and object of the Petitioner in filing the present Petition before this Court is to involve the Respondent in multifarious litigation, so as to unnecessarily prolong the trial of the Suit pending before the Trial Court, which is pending adjudication before the Trial Court for the last 10 years. It is also averred that, in law, neither the Plaintiff nor the Defendant can be allowed to project new facts as were available to them at the time of filing their initial pleadings and, therefore, the Trial Court has rightly rejected the application filed by the Defendant No.1/ Petitioner herein for seeking amendment of the Written Statement filed by him. In the end, it has been urged that the Petition filed by the Petitioner be dismissed.

5. Mr Z. A. Shah, the learned Senior Counsel, appearing on behalf of the Petitioner/ Defendant, has argued that the Courts have invariably held that the law relating to the amendment of the Written Statement should have a liberal interplay, as compared to the amendment of the Plaint and, as such, the learned Trial Court has erred in law while rejecting the application moved by the Petitioner herein, as Defendant, for seeking amendment of the Written Statement filed by him earlier in point of time. The learned Senior Counsel further submitted that the amendment sought in the Written Statement by the Defendant/ Petitioner herein was also not liable to be rejected by the Trial Court as the Suit pending before the Trial Court is at the infancy stage, wherein even issues have not been framed by the Trial Court so far. Mr Shah averred that the principle of *res judicata*, as applied by the Trial Court, was not, at all, applicable in view of the attending facts and circumstances of the case.

6. Mr Zahoor A. Shah, the learned Counsel for the Respondent, on the other hand, argued that the Defendant/ Petitioner herein, through the amendment of his Written Statement, wishes to introduce such facts which will change the complexion of the entire case before the Trial Court. It is submitted that the motive of the Petitioner/ Defendant to firstly apply for filing of better particulars, where he was unsuccessful, and, thereafter, seeking amendment of the Written Statement filed by him, is only to unnecessarily delay and prolong the litigation, so as to frustrate the rights of the Respondent/ Plaintiff. He has argued that both the applications moved by the Petitioner/ Defendant are virtually *verbatim* in facts pleaded to be incorporated/ amended, as such, the Trial Court has rightly rejected the subsequent application vide the impugned Order, as the same was hit by principle of *res judicata*. The learned Counsel has also argued that the Petition under Article 227 of the Constitution, in this behalf, is not maintainable.

7. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

8. It appears that the Plaintiff/ Respondent herein filed a Suit for declaration, ejectment, possession and mandatory injunction with respect to landed property measuring 02 Kanals and 04 Marlas comprising under Khasra Nos. 2482/2150/393, Khewat No. 324 and Khata No. 1118 Min, situate at Gupt Ganga, Srinagar, along with super structure standing on the said land. In the Suit, it has been pleaded that the Plaintiff/ Respondent herein, by virtue of sale deed dated 28<sup>th</sup> of November, 2007, purchased the aforesaid landed property from the Defendant No.2; that immediately after execution and registration of the sale deed, the Plaintiff/ Respondent herein received the peaceful possession of the Suit property and, accordingly, became the true and actual owner thereof to the total exclusion of Defendant No.2; that the Suit property was mutated in favour of the Plaintiff/ Respondent herein, in accordance with the provisions of the law vide mutation No. 6021; that, thereafter, the Defendant No.1/ Petitioner herein was, at the time of execution of sale deed, asked to vacate the premises as he was in possession as trustee, being the real brother of the Defendant No.2, who sought some time to do so; that the Defendant No.1/ Petitioner herein, thereafter, did not vacate the possession of the Suit property and continues to be in unauthorized and illegal possession thereof, to the detriment of the rights of the Plaintiff/ Respondent herein; and that the Defendant No.1/ Petitioner herein was, on numerous occasions, asked to vacate from the premises, but he being adamant in his will, always ignored the requests of the Plaintiff/ Respondent herein, constraining the Plaintiff/ Respondent herein to file the aforesaid Suit before the Trial Court.

9. On notice having been issued, the Defendant No.1/ Petitioner herein caused appearance before the Trial Court and filed his Written Statement, wherein he has denied the execution of the alleged sale deed relied upon by the Plaintiff/ Respondent herein. It was further stated that the Suit land has fallen in the share of the Defendant No.1/ Petitioner herein, after proper demarcation having been conducted by the revenue authorities concerned; that the Plaintiff had earlier also filed a Suit seeking restraint

order with regard to his dispossession, which was later dismissed in default, thereby making it clear that the Plaintiff/ Respondent herein is approbating and reprobating in his pleadings; and that the Plaintiff has no right, reason or justification on the basis of manipulated specification of property and alleged sale deed to ask the Defendant No.1/ Petitioner herein to handover the possession of the Suit land, from the property which has fallen in his share.

10. After filing of the Written Statement before the Trial Court, the Defendant No.1/ Petitioner herein seems to have filed an application seeking amendment of the same to the following extent:

“(i) The answering defendant had no knowledge about the Sale Deed dated 28.11.2007 on the basis of which plaintiff claims to have purchased 02 Kanals and 04 Marlas of land comprising in Survey No. 2482/2150/393, Khewat No. 324, Khata No. 1118-Min situate at Gupt Ganga, Srinagar, along with super structure standing on the said land from defendant No.2. In 2011 answering defendant received a Notice from the court of Munsiff (Sub Registrar) Srinagar asking the answering defendant to cause appearance before the said Court on 04.08.2011. In response to the summons, the answering defendant caused appearance before the said court. The proceedings in the said court continued only for a short time. The Suit was dismissed for non-prosecution by the court on 24.10.2011. The answering defendant denies the claim of the plaintiff;

(ii) That originally, the total land owned by the predecessor-in-interest of defendants 1 and 2 was 52 Kanals and 02 Marlas comprised in Survey No. 2150/393. The total land was owned by the following four persons:

- Ghulam Hassan Khanyari S/o Ghulam Mohi-ud-Din Khanyari R/o Gupt Ganga, Ishber Nishat, Srinagar;
- Muhammad Amin Khanyari S/o Ghulam Mohi-ud-Din Khanyari R/o Gupt Ganga, Ishber Nishat, Srinagar;
- Latief Ahmad Khanyari S/o Ghulam Mohi-ud-Din Khanyari R/o Gupt Ganga, Ishber Nishat, Srinagar; and
- Nazir Ahmad Khanyari S/o Ghulam Mohi-ud-Din Khanyari R/o Buchwara Dalgate, Srinagar.

(iii) There was a settlement between all the aforesaid parties on October 31, 1991. In terms of the settlement, vide para 5, the parties agreed and recorded that the property situate at Ishber Nishat “will be shared equally”. As a result of the said settlement, each of the aforesaid parties became entitled to own and possess 13 Kanals

and ½ Marlas of land. At the time settlement was arrived at and recorded, there were two residential houses existing on the said land. In terms of the settlement, all the parties agreed that the two houses will be given only to Mr. Ghulam Hassan (answering defendant) and Mr Muhammad Amin. This was agreed to and clarified subsequently vide Agreement dated 07.11.1991, which was in the custody of late Muhammad Amin. The parties acted on the settlement dated 31.10.1991 followed by the Agreement dated 07.11.1991. Ever since the execution of these documents, the answering defendant has been in possession of one residential house and the other residential house was in possession of Late Muhammad Amin. None of the parties objected to the position as was existing on spot after the settlements were agreed upon. At one stage defendant No.2 claimed ownership in respect of portion of the house which had fallen to the share of the answering defendant. The said defendant filed a Suit in this behalf in the Court of 2<sup>nd</sup> Subordinate Judge, Passenger Tax, Srinagar. The said Suit was dismissed by the Court on 14.02.2009;

(iv) The position as on date is that the answering defendant is in actual physical possession of the land which should have been Kanals and Marlas (but is short by 01 Kanal and 19 Marlas) and is in possession of four storeyed independent residential house. Neither the Plaintiff nor the defendant No.2 nor any other person is in possession of the land and the house which is in actual physical control of the defendant;

(v) The answering defendant further states that after the settlement dated 31.10.1991 followed by the Agreement dated 07.11.1991, the parties mutually agreed and settled demarcation of the entire 52 Kanals and 02 Marlas of land on spot and the two houses. At that point of time the parties had demarcated their respective portions with barbed wire. Subsequently, in the year 1998, need was felt by the answering defendant to raise a Pacca Brick Wall on a part of the land for which requisite permission was required from Srinagar Municipality. Accordingly, after completing all the necessary formalities, the Srinagar Municipality vide order dated 472 of 1998 dated 19.11.1998 accorded sanction in favour of the answering defendant for construction of compound walling as per the site plan. The answering defendant accordingly constructed the Wall in the year 1998. In this manner, the entire land including the residential house is duly demarcated and separated from rest of the adjoining properties by Pacca Brick Wall on all the sides and the house has a separate entry. Apart from the demarcation made by the parties, mutually, answering defendant was approached the Tehsildar on 14.10.1998 when the answering defendant needed permission of the Municipality for construction of Compound Walling. The Revenue authorities confirmed the demarcation on spot and made the site plan showing the position of the parties respectively as it existed on spot;

(vi) The answering defendant, therefore, submits that when the demarcation was carried out by the Revenue authorities and a detailed Report dated 16.10.1998 prepared, the answering defendant discovered that he was short by 01 Kanal and 19 ½ Marlas of land



from his entitlement. The answering defendant reserves his right to claim deficient land from the party concerned;

(vii) The answering defendant also finds it relevant to mention that defendant No.2 has already sold substantial portion of his land and only holds approximately, may be five to six Kanals. Another original co-owner, namely, Latief Ahmad Khanyari, has sold his entire holding and does not own any land on spot nor is in possession of any land. Similarly, the legal heirs of late Muhammad Amin Khanyari sold their entire holding including the residential house which had fallen to his share in terms of the settlement. The answering defendant has not alienated any land.

In addition to above, following statements are also required to be made in the written statement:

a. That the plaintiff is not in possession of any piece of land on spot. Therefore, under the provisions of the Land Revenue Act and the Rules made thereunder, no mutation could have been made in favour of the Plaintiff on the basis of his alleged 'Sale Deed':

In addition to above, following changes are also required to be made in the written statement:

In para 5 of the written Statement:

b. That the suit is still at its infancy stage. The proposed amendment will not prejudice the Plaintiff in any manner nor does it alter the nature of the Suit in any manner. The amendment of the written statement to the extent indicated hereinabove is necessary in order to settle all controversies between the parties. It is further submitted that while dealing with the amendment of written statement, the restraint and the limitations which apply while seeking amendment of the Plaint to no apply to the amendment of the written Statement.”

11. The Trial Court, while rejecting the application for amendment of Written Statement, has considered the matter on the touchstone of principle of *res judicata* and, while applying the doctrine of '*constructive res judicata*', the Trial Court has construed the filing of the earlier application for supplementing better particulars in terms of Order 6 Rule 4 of the Code of Civil Procedure (CPC); its rejection by the Trial Court; and the same being upheld by this Court as '*constructive res judicata*' to reject the application for amendment of the Written Statement.

12. This Court, in a challenge thrown through the medium of OWP No. 976/2018 titled '**Ghulam Hassan Khanyari v. Reyaz Ahmad Bhat & Anr.**', while discussing Rule 4 of Order 6 of the Code of Civil Procedure

(CPC), in terms of Judgment dated 13<sup>th</sup> of July, 2022, held that the application filed by the Petitioner, as Defendant, before the Trial Court was not in conformity with Order 6 Rule 4 of the Code, as it sought to elaborate what is already pleaded in the Written Statement filed by him prior in time and that such elaboration certainly amounts to amending the earlier Written Statement, which could not have been done and, therefore, the Court below had rightly rejected the same as what the law prohibits directly cannot be done indirectly. It was further held by this Court that even otherwise, the application filed before the Court below by the Petitioner, as Defendant, nowhere refers to fraud, breach of trust, misrepresentation, wilful default or undue influence vis-à-vis the Respondent No.1/ Plaintiff before the Court below, which could mean that the requirements of Order 6 Rule 4 of the Code of Civil Procedure (CPC) are not fulfilled. It was also observed that it goes without saying that this Court has not expressed any opinion on the merits of the case, which was to be decided without getting influenced, in any way, by any of the observations made by this Court in the Order.

13. In the considered opinion of this Court, the Trial Court has formulated a wrong opinion by saying that the application seeking amendment in terms of Order 6 Rule 17 of the Code of Civil Procedure (CPC) is not maintainable in view of '*constructive res judicata*', as the Petitioner, as Defendant, had lost the earlier round of application with regard to supplementing of better particulars in the Written Statement. More so, in view of the admission made by the learned Counsel for both the sides that the Suit pending before the Trial Court is at the infancy stage, wherein even issues have not been framed by the Trial Court.

14. Order 6 Rule 17 of the Code of Civil Procedure (CPC) confers on a Court a power, at any stage of the proceedings, to allow alteration and amendment of the pleadings, if it is of the view that such amendment may be necessary for determining the real question in controversy between the parties and such amendment can be allowed even after the trial has commenced, if 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. The Courts have to be liberal in granting the prayer for amendment of pleadings, unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a *bona fide* one. The consideration for amendment of a Plaint and the consideration for amendment of a Written Statement stand on different footings and even an admission in the pleadings can be explained and inconsistent pleas can be taken in an amended Petition, even after taking a definite stand in the Written Statement filed prior in point of time. In the case of Written Statements, the Courts are more liberal in allowing the amendment than that of a Plaint, as the question of prejudice would be far less in the former than in the latter one.

15. Let us now appreciate as to how the law on the aforesaid issue involved in the present Petition *qua* the scope of amendment in Written Statement has been evolved by the interpretation of the Apex Court.

16. The Apex Court in a case titled “**Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors.**”, reported as “**2007 (5) SCC 602**” has held that the amendment of a Written Statement can be allowed more liberally and that the Defendant is entitled to take a new defence and to plead inconsistent stands and even explain admission by amending the Written Statement.

17. The Apex Court, again, in case titled “**Sushil Kumar Jain v. Manoj Kumar & Anr.**”, reported as “**2009 (14) SCC 38**”, in Paragraph Nos.10 and 11, has held as under:

“10. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action [See **Baldev Singh & Ors. v. Manohar Singh & Anr., 2006 (3) RCR (Civil) 844; 2006 (2) RCR (Rent) 265; 2007 (4) RAJ 435**].

11. Similar view has also been expressed in **Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors., 2007 (2) RCR (Civil) 830: 2007 (1) RCR (Rent) 457: 2007 (2) RAJ 502**. It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.”
18. The Apex Court, in yet another case reported as “**2018 (2) SCC 87**” titled “**Raj Kumar Bhatia v. Subhash Chander Bhatia**”, has held that allowing amendment in the Written Statement would not amount to withdrawal of admission contained in the Written Statement. Paragraph No.11 of the aforesaid Judgment, being relevant, is reproduced as under:

“11. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In **Sadhna Lodh v. National Insurance Company, 2003 (1) RCR (Civil) 772: (2003) 3 SCC 524**, this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its

defence. The amendment would cause no prejudice to the Plaintiff.”

19. The Apex Court, again, in a case titled “**State of Bihar & Ors. v. Modern Tent House & Anr.**”, reported as “**2017 (8) SCC 567**”, held that the Appellants, in substance, seek to elaborate the facts originally pleaded in the Written Statement by way of proposed amendment and that it is in the nature of amplification of the defence already taken and does not introduce any new defence, compared to what has been originally pleaded in the Written Statement.

20. The Apex Court, in case titled “**Baldev Singh & Ors. v. Manohar Singh & Anr.**”, reported as “**2006 AIR (Supreme Court) 2832**”, has laid down that amendment in Written Statement may be allowed to take inconsistent plea, but may not be allowed in the case of a Plaintiff and that it will be open to the party to explain admission by seeking amendment in the Written Statement. It was further observed that inconsistent pleas can be raised by the Defendants in the Written Statement, although the same may not be permissible in the case of a Plaintiff and that inconsistent or alternative pleas can be made in the Written Statement.

21. Keeping in view the afore-stated legal position and reverting back to the facts of the case on hand, the Petitioner, as Defendant, had projected before the Court below that the land claimed to have been purchased by the Plaintiff/ Respondent herein from the brother of the Petitioner had fallen in his share in a family settlement and, therefore, the brother of the Petitioner could not have sold the property having fallen in the share of another brother. The Petitioner, as Defendant, wishes to amend his Written Statement, thereby incorporating all the facts with regard to family settlement and apportionment of the land between him and his brothers, after the demise of their father, Ghulam Mohi-ud-Din Khanyari. The Petitioner, as Defendant, had pleaded certain facts which explained in detail the Written Statement filed by him earlier in point of time. The

rejection of the application on this plea that the doctrine of '*constructive res judicata*' would operate, in the considered opinion of this Court, is not a correct view taken by the Trial Court, inasmuch as, this Court, while deciding the earlier Petition, as mentioned hereinabove, had itself explained that the application for supplementing better particulars in the Written Statement amounts to seeking amendment of the Written Statement which, in no way, should restrict the right of the Defendant/ Petitioner herein to seek amendment of his Written Statement, more so, in view of the afore-stated law laid down by the Apex Court with regard to being liberal in granting the prayer of amendment to the Written Statement, as compared to the Plaint, even pleading inconsistent and alternative pleas.

22. The plea raised by the learned Counsel for the Respondents that a Petition under Article 227 of the Constitution is not maintainable appears to be misplaced, as this plea has not been raised with regard to questioning any decision of the Court below taken on the basis of some evidence, which may not be open to this Court to go into, while exercising supervisory jurisdiction, so as to take a different view to upset the Order passed by the Court below. This Court is well within its jurisdiction to interfere in a case if it finds that an Order passed by the Trial Court, during the proceedings of the said case, may result into miscarriage of justice. In the instant case, if the Defendant/ Petitioner herein is not permitted to seek amendment of his Written Statement, the final adjudication of his case would be detrimental to his interests, as he will not be in a position to set up his case or lead evidence in support of that case during trial. The Judgments cited and relied upon by the learned Counsel for the Respondent/ Plaintiff are distinguishable on facts and, thus, are of no help to support his contentions.

23. Viewed thus, the impugned Order dated 25<sup>th</sup> of September, 2023 passed by the Trial Court is not sustainable in the eyes of law and is hereby set aside. Resultantly, the application moved by the Defendant/ Petitioner herein for seeking amendment of his Written Statement is

allowed and the Petitioner, as Defendant, shall be allowed to file his amended Written Statement before the Court below, within a period of two weeks from today. It is, however, made clear that nothing said in this Judgment shall be construed as an expression of opinion with regard to the merits of the case of the parties before the Trial Court, which shall be considered and decided by the Trial Court on its own merits.

24. Petition is, thus, **disposed** of on the above terms, along with the connected CM.

25. A copy of this Judgment be forwarded to the learned Trial Court for information and compliance.

**SRINAGAR**  
August 23<sup>rd</sup>, 2024  
"TAHIR"

**(M. A. CHOWDHARY)**  
**JUDGE**

i. Whether the Judgment is approved for reporting? Yes.