

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.3165 of 2013 (O&M)
Date of Decision: August 21, 2015**

Ram Bahadur and others

.... Petitioners

vs.

Municipal Corporation and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mannu K. Bhandari, Advocate for the petitioners.

Mr. Vishwajit Bedi, Advocate for respondent No.1.

Mr. Ashok Bhardwaj, Advocate for respondent Nos.2 to 4

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 10.12.2012 (Annexure P-7) passed by learned Civil Judge (Jr. Divn.), Patiala, vide which the application of the plaintiffs-petitioners under Order I, Rule 10 CPC for impleading defendants No.2 to 10, was dismissed being time barred as the claim against them is time barred. Also impugned the order dated 22.04.2013 (Annexure P-8), vide which the Civil Judge (Jr. Divn.), Patiala dismissed the application of the plaintiffs-petitioners under Order VI, Rule 17 CPC for amendment of the plaint for impleading the party.

The brief history of the case is that the plaintiff had filed a suit for declaration to the effect that the promotions awarded to the Baildars to the post of Skilled helpers vide order NO.84, dated

04.07.2007, released order on 13.08.2007 by Assistant Commissioner, Municipal Corporation, Patiala is illegal, null and void, in violation of the seniority of the Baildars, stating that the plaintiffs-petitioners are senior in the promotion list deserve to be declared promoted and suit of mandatory injunction directing the defendants to promote the plaintiffs-petitioners No.1 to 7 as per seniority list placed in the seniority list from serial Nos.1 to17.

When the written statement was filed, the Municipal Corporation took the objection that the suit is bad for mis joinder of necessary parties. Accordingly, the plaintiffs filed an application under Order VI, Rule 17 CPC on 19.07.2010 for amendment of the plaint. The said application was kept pending. In the meanwhile, the plaintiffs-petitioners filed another application under Order I Rule 10 CPC for impleading defendant Nos.2 to 10 in the plaint, who are likely to be promoted and to be affected by the judgment. The said application was dismissed vide impugned order dated 10.12.2012 (Annexure P-7) on the ground that the limitation against the newly added defendants will start from the date of institution of the suit not from the date of service of summons. It was further noticed that the suit was filed on 23.10.2007/24.10.2007 and consequently, the claim against them has become time barred.

The earlier application filed on 19.07.2010 for amendment of plaint was taken up subsequently and was dismissed on 22.04.2013 on the ground that such application under Order VI, Rule 17 has already been dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the application under Order 6, Rule 17 CPC shows that in order to meet the objections made in the written statement, nine persons were sought to be made as defendants.

A perusal of the application shows that the primarily it is an application under Order I, Rule 10 CPC as no amendment of the pleadings was sought rather the said persons were sought to be impleaded as defendants.

Therefore, limitation, if any, starts against such persons from the date of service of summons, after they are added as party.

Unluckily, the said application was kept pending for nearly two years, five months. As earlier the applicant had moved an application under Order VI, Rule 17 CPC for amendment of the plaint but the defendant-respondent raised objection that the application should have been filed under Order I, Rule 10 CPC, then the plaintiff-petitioner filed another application under under Order I, Rule 10 CPC on 18.08.2012, which was taken up earlier and dismissed.

It was the duty of the Court to dispose of such application promptly, particularly, when limitation was involved. The trial court took little less than three years to decide such application, for which the plaintiffs could not be penalized. The impleading of the said defendants is necessary as they are likely to be adversely affected by the decree, if passed in the present suit.

It being so, the application Under Order 6, Rule 17 CPC, which as in fact under Order I, Rule 10 CPC is allowed after setting aside impugned order dated 22.04.2013 (Annexure P-8) subject to the rights of the plaintiffs-petitioners to seek condonation of delay before the lower court and the right of the newly added defendants to plead limitation. Such questions shall be decided on merits by the lower court.

In view of the matter, subsequent application filed under Order 1, Rule 10 CPC become infructuous and is disposed of as such after modifying the order dated 10.12.2012.

The present revision petition is allowed accordingly.

August 21, 2015
sarita

(KULDIP SINGH)
JUDGE