

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

**Civil Revision No.3415 of 2013
Date of Decision: 24.12.2015**

Kulwant Singh

.....Petitioner

Vs

Gram Panchayat of Village Bhalwan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Satish Goel, Advocate
for the petitioner.

Mr. Raman Mohinder Sharma, Advocate
for the respondents.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 04.02.2013 passed by Civil Judge (Sr. Divn.) Dhuri, dismissing the application under Order 6 Rule 17 CPC for amendment of the plaint.

[2]. Plaintiff/petitioner sought amendment of the plaint in a suit for permanent and mandatory injunction on the ground that in the plaint, relief of permanent injunction was sought restraining the defendants from installing any pipes or sewerage pipes through the land of the plaintiff as shown in the plaint,

however the defendants after passing of the stay order by the trial Court have laid sewerage pipes through the land of the plaintiff, therefore, necessity arose for filing the application for amendment of the plaint to seek removal of pipes from the land and, therefore, plea of mandatory injunction, directing the Gram Panchayat to remove the sewerage pipes illegally installed through the land of the plaintiff is sought to be added.

[3]. Plaintiff alleged that stay order dated 02.12.2011 was passed by the trial Court and sewerage pipes through the land of the plaintiff were installed thereafter. A Local Commissioner was appointed, who gave the report. On that premise, plaintiff sought the amendment in question.

[4]. Additional Civil Judge (Sr. Divn.) Dhuri passed the impugned order noticing that the suit along with application for stay was filed on 01.12.2011. On 02.12.2011, the stay application was decided and thereafter issues were framed on 13.02.2012 and was trial commenced.

[5]. In view of proviso to the Rule, after commencement of the trial, requirement in terms of due diligence and knowledge are to be satisfied. The factum of installation of sewerage pipes in the context of date, time and manner have to be pleaded and *has* to be proved *prima facie*. No date of alleged installation of sewerage pipes has been alleged by the plaintiff. Only a report

of Local Commissioner in the proceedings under order 39 Rule 2-A CPC has been made the basis for seeking such amendment, wherein again no date is forthcoming in respect of alleged installation of sewerage pipes in the report of Local Commissioner dated 06.01.2012. The date of alleged mischief is not forthcoming.

[6]. The trial has already commenced. In para No.8 of the written statement the defendant/Gram Panchayat had specifically taken the ground that the para No.8 of the plaint is wrong and denied. It is incorporated that defendants are threatening to install the sewerage pipes through the suit property and to cause damage to the suit property or to the crop as alleged by the plaintiffs. The sewerage pipe lines have already been laid there. Therefore, question of threatening does not arise.

[7]. In view of para no.8 of the written statement, factum of sewerage pipe line being in existence has already been pleaded, therefore, no question of laying the alleged sewerage pipe lines after filing of the suit arises. The plea for seeking amendment is *prima facie* found to be false and the trial Court has rightly rejected the plea as ingredients of due diligence and knowledge after commencement of trial has not been proved.

[8]. The amendment sought by the party should not be

based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[9]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or are *mala fide* in nature? The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763**, the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844**, **Kailash vs. Nanhku and ors., (2005) 4 SCC 480**, and

Rajesh Kumar Aggarwal vs. K.K. Modi, 2006(2) RCR (Civil)

577 and AIR 2006 SC 1647 reiterated the aforesaid facts.

However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078** held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions

as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse. The Court must do full and complete justice to the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court.**

[10]. Apparently, the prayer for amendment is based on *prima facie* falsehood in view of para No.8 of the written statement. Moreover proviso to Rule in respect of due diligence has not been proved. Therefore, in considered opinion of this Court the prayer for amendment of plaint has been rightly rejected by the trial Court.

[11]. In view of above, finding no merit in this revision petition, the same is dismissed.

December 24, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**