

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3910 of 2014.

Decided on:-January 30, 2015.

Lal Singh.

.....Petitioner.

Versus

Malkiat Singh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Mohd. Yousaf, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application (Annexure P-4) filed under Order VI Rule 17 CPC for amendment of the written statement vide order dated 7.5.2014 (Annexure P-6) of the lower court, forms genesis of this revision petition.

2. A suit for recovery of Rs.6,02,000/- with interest based on pronote and receipt dated 20.9.2008 is pending adjudication before the lower court since 13.9.2011. By way of amendment in the written statement, a receipt copy whereof is Annexure P-3 is sought to be pleaded with averments that though a loan of Rs.3,50,000/- was taken from the plaintiff and yet another sum of Rs.2,50,000/- was also received, but the entire payment with interest had been repaid to father of the plaintiff. In short, it is claimed that total amount of Rs.8,30,000/- including interest had been paid to father of the plaintiff on 20.10.2013 in the presence of the witnesses and receipt of the same had been executed in favour of the defendant and his son.

3. Counsel for the defendant, petitioner herein, has urged that it is subsequent event and thus amendment should have been allowed. Support has also been sought from ***Rajesh Kumar Aggarwal and others Versus K.K. Modi and others 2006(3) SCR 175 (Supreme Court)*** wherein it was held that it is mandatory for the courts to allow all the amendments which are necessary for the purpose of determining real questions of controversy between the parties.

4. Counsel for the plaintiff, respondent herein, on the other hand, has urged that the amendment sought for is not only malafide but is also a contrivance to delay and dilate the proceedings with a purpose to harm his interest.

5. If written statement originally filed by the applicant-defendant, petitioner herein, is gone through, it clearly transpires that there is complete denial of execution of the pronote whereas by way of amendment, entire tenor and temperament of the defence taken by the defendant is sought to be changed. In fact, the written statement after amendment, if allowed, would be completely a new incarnation of the earlier one and clearly would be mutually destructive of the pleas taken in the earlier written statement.

6. It may also be noticed that this receipt is of 30.10.2013 (Annexure P-3) whereas the defendant, petitioner herein, had been seeking adjournments after adjournments for producing evidence during this period but did not lead any evidence. Had the defendant been in possession of this receipt dated 30.10.2013, it was to be produced in the court without any delay. When questioned, counsel for the petitioner has no answer as to why this receipt and the fact of settlement was not brought to the notice of the court immediately after 30.10.2013, till the application for amendment of the written statement was filed on 23.1.2014.

7. Counsel for the plaintiff, respondent herein, citing ***Revajeetu Builders & Developers Versus Narayanaswamy and sons & others 2010(1)***

RCR (Civil) 27 (Supreme Court) has urged that the amendment sought for is not only malafide but also is a contrivance to delay and dilate the matter. In this authority, Hon'ble Apex Court has observed that there are some factors which are to be taken into consideration while dealing with applications for amendments. Relevant observations of the Hon'ble Apex Court in para Nos.67 to 70 are as below:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments

and should never permit mala fide, worthless and/or dishonest amendments.”

When the tests laid down in this judgment are applied to the facts of this case, these go against the petitioner-defendant.

8. Even viewed from another angle, this receipt even if is taken on its face value is not in favour of the plaintiff but allegedly is in favour of his father who is not a party to this litigation. The amendment is not necessary for determining the real controversy between the parties. In fact, the amendment sought is mutually destructive of the pleas earlier taken by the defendant, petitioner herein.

9. Keeping in view the totality of facts and circumstances as discussed earlier, the application under Order VI Rule 17 CPC (Annexure P-4) was rightly dismissed by the lower court vide impugned order dated 7.5.2014 (Annexure P-6).

10. Sequelly, no ground to interfere with the impugned order is made out which is correct on facts as also in law and has no infirmity. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

January 30, 2015

'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes