

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

**Civil Revision No.425 of 2015**

**Date of Decision: 11.09.2015**

**Satya**

**....Petitioner**

**Vs**

**Babita Sharma**

**....Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Kushagra Mahajan, Advocate  
for the petitioner.

Mr. Aseem Kalia, Advocate for  
Mr. Premjit Kalia, Advocate  
for the respondent.

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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 07.08.2014 passed by Civil Judge, (Sr. Divn.), Amritsar vide which application under Order 6 Rule 17 CPC for amendment of the plaint has been accepted.

[2]. Respondent (plaintiff) filed a suit for permanent injunction restraining the defendant (petitioner) from alienating double storey house consisting of two rooms, one store, latrine bathroom on the ground floor along with staircase and four rooms on the first floors bearing private number 1, total area measuring 100 sq. yd., having defined boundaries.

[3]. At the time of filing of suit for permanent injunction, the relief of possession by way of specific performance of agreement was not accrued to the plaintiff. During the pendency of the suit, stipulated date for execution and registration of sale deed expired. According to the plaintiff, she has appeared before the office of Sub-Registrar on the target date for performance of bilateral obligation arising out of agreement to sell dated 29.07.2010. She claimed that the defendant (petitioner) did not turn up on the stipulated date and during the pendency of the suit the relief or possession by way of specific performance of agreement to sell dated 29.07.2010 has accrued to her. An application for amendment of the plaint in view of subsequent event was sought to be prayed under Order 6 Rule 17 CPC read with Section 151 CPC.

[4]. Another application for amendment of the earlier application has been moved on the ground that due to inadvertence the relief sought for amendment in the first application could not be mentioned and, therefore, necessity arose to incorporate amendment in the application of amendment made earlier. Amendment was sought to be made in the headnote, para 4 by way of adding paras 4-A and 4-B, in para No.5, para No.9 and in the prayer clause.

[5]. According to plaintiff the amendment sought to be introduced does not in any way change the cause of action and also would not change the real controversy between the parties. Learned counsel for the petitioner has submitted that it is not discernible from

the order as to which of the application has been allowed by the trial Court. Learned counsel stated that if the amendment application is allowed, it will run contrary to the provisions of Order 6 Rule 17 CPC as the amendment could be allowed only in respect of pleadings and not of the application.

[6]. An amendment in the pleadings is to be liberally construed so as to consider real dispute between the parties and to give decision more satisfactorily on the basis thereof. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow the amendment at any stage, however knowledge and due diligence are considerations on which *bona fides* of the party has to be tested in order to prevent frivolous application. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to (2007) 6 SCC 737 Ram Chandra Shakharaman Mahajan v. Damodar Trimbak Tanksale and AIR 2006 SC 1647, Rajesh Kumar Aggarwal v. K.K. Modi.

[7]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in pleading. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. All amendments are to be allowed which satisfy the aforesaid two conditions. The conditions are that the amendment

sought would not be unjust and results in prejudice against the opposite party which would not be compensated in terms of cost or would deprive the opposite party of a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining the real issues between the parties. Amendment can be refused if such a prayer is barred by time and where the opposite party would suffer irreparable loss which could not be compensated in terms of costs. Court can allow an amendment at any stage of the proceedings and for the purposes of determining the real questions in controversy. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which results in material prejudice to the opposite party not capable of being compensated in terms of cost.

[8]. In the instant case, at the time of filing suit for permanent injunction, the cause of action in terms of suit for specific performance was pre-mature. During the pendency of the suit, stipulated date for execution and registration of sale deed has expired and cause of action for possession by way of specific performance was accrued to the plaintiff. Apparently there is no material change in the original claim of the plaintiff.

[9]. The objection of the petitioner that in case amendment of the application for amendment is allowed it will run contrary to Order

6 Rule 17 CPC is concerned, it is necessary to observe that Order 6 Rule 17 CPC relates to amendment of pleadings. There is no specific provision for amendment of an application for amendment, however for such correction of mistake, the Court has inherent powers to allow such correction in the interest of justice and equity. The Court has all the powers to allow amendment of the application of amendment in order to prevent abuse of process of law which otherwise would result in mis-carriage of justice.

[10]. After moving an application for amendment, it is now the second application which has to prevail upon the first application. The first application relates to amendment of the pleadings. The second application provides necessary node to carry out amendment in the pleadings on pointed areas. In this way there will be no ambiguity or mis-carriage of justice if amendment is carried out in the pleading on pointed areas as disclosed in the second application.

[11]. Learned counsel for the respondent has placed reliance upon judgment of this Court in **Gurnam Singh v. Hari Mohan 2001 (1) RCR (Civil) 663** to contend that such a correction of a mistake can be ordered while exercising inherent powers of the Court in the interest of justice.

[12]. The Order 6 Rule 17 CPC deals with the amendment of pleadings and is not exhaustive and the Court has all the powers in the matter of amendment. Since there is no provision for amendment of the application for amendment, therefore, in appropriate cases,

Court can exercise inherent powers under Section 151 CPC for the ends of justice and to prevent abuse of process of Court.

[13]. It is a settled principle of law that if the plaintiff is entitled to file a fresh suit on the issue of amendment then it is not proper to disallow the amendment as it would lead to multiplicity of proceedings. Even dismissal of such application with liberty to file fresh suit is wrong. Amendment sought for putting forth the real question in controversy between the parties should be permitted. Pre-trial amendments should be liberally construed as in such situation opposite party does not suffer any prejudice because everything remains open for a lawful contest, including question of delay.

[14]. Learned counsel for the petitioner at last submitted that there is no provision in the Specific Relief Act, requiring the plaintiff to wait for the expiry of due date for performance of agreement where the intention of the defendant is clear by his overt act. There cannot be any dispute with the proposition, but each case has to be tested on its factual parameters.

[15]. At the time of filing of suit for permanent injunction, the intended act of the defendant was sought to be curtailed by way of seeking restraint order so as to preserve the property in question. If during pendency of the suit, the target date for execution of sale deed has expired, then cause of action has definitely accrued to the plaintiff to seek specific performance of the agreement. The plea as

raised by the petitioner can be one of the defence to be used at the relevant time, but at this stage such a plea cannot prevent the Court from allowing the amendment in question.

[16]. Resultantly, this Court does not find any illegality or perversity in the order dated 07.08.2014 passed by Civil Judge (Sr. Divn.), Amritsar allowing the application under Order 6 Rule 17 CPC. Consequently, this revision petition is dismissed.

September 11, 2015  
*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**