

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4724 of 2013.
Decided on:-January 30, 2015.

Raj Kumar Arora.

.....Petitioner.

Versus

Ramesh Kumar Arora and others

.....Respondents.

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

Argued by:- Mr. Rohit Rana and
Mr. Kunal Dawar, Advocates
for the petitioner.

Respondent No.1 ex-parte
vide order dated 26.11.2013.

Mr. Santosh Sharma, Advocate
for respondents No.5 to 8.

Respondents No.9 to 11 ex-parte
vide order dated 26.11.2013.

Dr. Bharat Bhushan Parsoon, J.

A suit for seeking a decree of rendition of accounts filed by the plaintiff, petitioner herein, is pending adjudication before the lower court since 9.10.2009. When the suit was proceeding further, an application (Annexure P-3) for amendment of the plaint was moved on 13.6.2011. Finding no merit in the application, the same was dismissed vide order (Annexure P-1) of 25.4.2013 of the lower court. This order is under

challenge in this revision petition at the instance of the plaintiff, petitioner herein.

2. Perusal of the paper book reveals that this suit has been taken as a luxury litigation by the plaintiff, petitioner herein. Merely because the written statement has not been filed yet by few of the defendants is no ground to allow this application particularly when the same is neither bonafide nor helps the court in effectively and competently adjudicating the matter in controversy. Entire case of the petitioner-plaintiff is founded on agreement to sell dated 22.8.2005. Relief of injunction restraining the defendants from alienating the suit property was also claimed.

3. Vide agreement to sell dated 22.8.2005, the respondent-company had allegedly agreed to sell property of the company to defendants No.6 and 7, respondents No.6 and 7 herein. Injunction was also sought against defendants No.1 to 5, respondents No.1 to 5 herein, from operating the bank account held in the name of defendant No.5 with defendants No.9 and 10 as also from withdrawing the money. Defendant No.5, respondent No.5 herein, is the company which has purchased the property bearing No.H.No.B-XIX-110, vide different sale deeds as per details in para No.3 of the plaint. It is claimed that vide a separate agreement of 22.8.2005, defendant No.5 through defendant No.1 had agreed to sell the suit property in favour of defendants No.6 and 7 which agreement was also signed by the plaintiff alongwith defendants No.1 to 4, respondents No.1 to 4 herein.

4. The suit originally filed is clear and simple suit for rendition of accounts and for seeking permanent injunction. Elaborating that defendant No.1 was to receive 2/6th share whereas plaintiff and defendants No.2 to 4 were to receive 1/6th share each and injunction was sought against defendants No.9 and 10 not to permit defendants No.1 and 2 to operate the bank account held in the name of defendant No.5 company.

5. By way of amendment, the entire tenor and texture of the suit is sought to be changed. Now, even transfer of shares by defendants No.1 and 2 of defendant No.5 company to defendants No.6 and 7 are also sought to be declared void and ineffective qua rights of the plaintiff. Ground of fraud has also been sought to be introduced.

6. If amendment sought for by the plaintiff is allowed, it will entirely change the nature of the suit and instead of solving the dispute would further escalate it because of its multifarious proliferation. The amendment sought for neither is necessary for proper and effective adjudication of the case nor is bonafide. Rather, if allowed, it would cause grave prejudice to the other side which will not be compensable in terms of money. Refusing amendment, rather, is just and proper as this amendment concedingly completely changes the nature and character of the suit. Even when viewed from the point of limitation, amendment sought in the plaint would be completely barred by limitation on the date of filing of the application.

7. Hon'ble Supreme Court in ***Revajeetu Builders & Developers Versus Narayanaswamy and sons & others 2010(1) RCR (Civil) 27***, on the matter of amendment has held in para Nos.67 to 70 of the judgment 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.”

All these points detailed in this authority go against the plaintiff, petitioner herein.

8. The impugned order is well-written and elaborate on all aspects. It considers attending facts and circumstances as also the legal implications involved in the amendment sought for by the plaintiff. In fact, the plaintiff has sought a circuitous route in completely substituting the earlier plaint by way of amendment wherein completely a new cause of action with new pleas and a new case is sought to be set up which on the date of application is barred by limitation.

9. Keeping in view the totality of facts and circumstances as

discussed earlier, the application under Order VI Rule 17 CPC (Annexure P-3) was rightly dismissed by the lower court vide impugned order dated 25.4.2013 (Annexure P-1).

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