

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4839 of 2013 (O&M)
Date of decision: 24.4.2015

Shri Durga Publicity Service and another

.. Petitioners

v.

Municipal Corporation, Jalandhar

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Prateek Mahajan, Advocate for the petitioners.
Mr. Hari Om Verma, Advocate for the respondent.

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Rajesh Bindal J.

The petitioners-plaintiffs are before this court impugning the order dated 5.7.2013, passed by the learned court below, whereby the application filed by them seeking to amend the plaint, was dismissed.

It is a case in which the respondent-Corporation called tenders for contract of two foot over bridges-- (i) G.T. Road, near Bus Stand, Jalandhar and (ii) in front of APJ School, near Guru Nanak Mission Chowk, Jalandhar, vide public notice dated 7.9.2004. The petitioners submitted their tender on 17.9.2004, which was accepted. The agreement was signed on 19.1.2005. In terms thereof, the petitioners were to construct the aforesaid two foot over bridges at their own cost spending about ₹ 90,00,000/-, however, they had a right to display advertisements thereon for a period of 81 months. The construction of foot over bridges was on Built, Operate and Transfer (for short, 'BOT') basis. As there were certain objections regarding location of the bridge in front of APJ School, near Guru Nanak Mission Chowk, it was shifted to B.M.C. Chowk, Jalandhar. The construction was completed in the year 2008. Before expiry of the agreed period of 81

months, the respondent threatened to demolish the bridge near Bus Stand, Jalandhar without even providing for alternative site. Immediately, the petitioners filed suit for injunction on 5.5.2008. However, during the pendency of the suit, the bridge was demolished. Application for amendment was filed seeking mandatory injunction directing the respondent to provide alternative site. The amendment was allowed on 21.12.2009. While the suit was still pending, the respondent demolished even the second foot over bridge constructed at B.M.C. Chowk, Jalandhar without providing alternative site. The application for amendment was filed to incorporate the relief of mandatory injunction of alternative site for the second bridge. The same was dismissed by the court below on 5.7.2013. The order has been impugned in the present petition.

Learned counsel for the petitioners submitted that the ground on which the learned court below has dismissed the application for amendment is totally erroneous, namely, that in the suit filed, the petitioners had not referred to the bridge for which the relief is being sought and further the cause of action having arisen after filing of the suit, the petitioners may file a fresh suit claiming the relief. Learned counsel submitted that tenders were called by the respondent for construction of two foot over bridges on BOT basis. The petitioners' tender was accepted. There is single agreement signed for both the bridges. In the plaint filed, complete details have been provided. The relief at that stage claimed was for injunction pertaining to one bridge, as the same was sought to be demolished. As during the pendency of the suit, the bridge was demolished, the plaint was amended and relief of mandatory injunction seeking alternative site was claimed. The amendment was allowed. When the second bridge was also demolished, the plaint was sought to be amended to incorporate the relief of mandatory injunction for providing alternative site for the same as well. As per the agreement, the petitioners had right to display advertisement for a period of 81 months. Undisputedly, the same had not expired. It is not even disputed by the respondent that the petitioners had an independent right to file the suit claiming the relief, which is being sought by way of an amendment, however, the same will merely result in multiplicity of litigation as the

agreement pertaining to both the bridges is one and relief is also identical, namely, providing alternative sites on account of demolition of bridges already constructed during the currency of the period the petitioners were permitted to display the advertisements. Under these circumstances, the amendment should have been allowed. In support of his plea, reliance was placed upon the judgments of Hon'ble the Supreme Court in Sampath Kumar v. Ayyakannu and another, 2002 (4) RCR (Civil) 566 and Rajesh Kumar Aggarwal and others v. K. K. Modi and others, 2006(2) RCR (Civil) 577.

On the other hand, learned counsel for the respondent submitted that as per clause 18 of the agreement, the respondent-Corporation is not responsible to compensate for any interruption in display of advertisements due to some unavoidable circumstances, hence, the suit itself is not maintainable. The petitioners have not led any evidence in the suit. In case, the second bridge has been demolished, the petitioners have an independent cause of action to file a fresh suit instead of filing application seeking amendment. The cause of action to file suit claiming alternative sites on account of demolition of two bridges are independent. Both cannot be clubbed together in one suit.

Heard learned counsel for the parties and perused the paper book.

The petitioners, being successful bidders for construction of two foot over bridges on BOT basis, agreement was signed between the parties on 19.1.2005. As per the agreement, the petitioners were to construct two foot over bridges – (i) G.T. Road, near Bus Stand, Jalandhar and (ii) in front of APJ School, near Guru Nanak Mission Chowk, Jalandhar at its own cost, which approximately was ₹ 90,00,000/-. The petitioners had the right to display advertisements on the specified parts of the bridges for a period of 81 months. As there was some problem regarding construction of the bridge in front of APJ School, near Guru Nanak Mission Chowk, Jalandhar, the site was shifted to B.M.C. Chowk, Jalandhar. The petitioners constructed the bridges. However, as in the year 2008, before expiry of the period for which the petitioners had the right to display advertisements on

the bridges, the respondent threatened to demolish one of the bridges located at the site of G.T. Road, near Bus Stand, Jalandhar, suit for permanent injunction was filed on 5.5.2008. However, as there was no interim stay, the same was demolished. The application for amendment was filed seeking relief of mandatory injunction directing the respondent to provide alternative site. The application was allowed on 21.12.2009. While the suit was still pending, even the second bridge was also demolished. By filing application on 3.11.2010, amendment was sought to seek relief of mandatory injunction for providing alternative site even for the second bridge, which has been declined.

It is not in dispute that one common tender was called by the respondent for construction of two bridges and after the acceptance of the offer made by the petitioners, one single agreement was signed on 19.1.2005, meaning thereby the terms and conditions for both the bridges are same. A perusal of the averments made by the petitioners in the suit initially filed shows that facts have been mentioned in detail regarding tender and agreement pertaining to both the bridges. As at that stage, threat of demolition was only pertaining to one bridge, the relief was prayed accordingly. After that bridge was demolished, relief for mandatory injunction was sought by way of amendment, which was allowed. Since during the pendency of the suit, the second bridge was also demolished, application for amendment for seeking the relief of mandatory injunction providing for alternative site for the same was also filed. It was not disputed by learned counsel for the respondent that a fresh suit could be filed by the petitioner claiming the relief of mandatory injunction as it was a fresh cause of action. The fact remains that suit already filed by the petitioners claiming relief of mandatory injunction for providing alternative site for demolition of one bridge was already pending and the agreement for construction of two bridges on BOT basis is common. When during the pendency of the suit, second bridge has also been demolished, there is nothing wrong in allowing the petitioners to amend the suit already pending for incorporating that relief as well as the agreement dealing with both the bridges is common. Permitting the petitioners to amend the suit would curtail

multiplicity of proceedings in court.

For the reasons mentioned above, the present petition is allowed. The impugned order, passed by the learned court below, is set aside. The application for amendment of the plaint is allowed.

The petition stands disposed of.

(Rajesh Bindal)
Judge

24.4.2015
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(Refer to Reporter)