

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5918 of 2015(O&M)
Date of decision: 29.10.2015

Harbhajan (deceased) through his LR

... Petitioner

Versus

Raghubir @ Raghubir (deceased) through his LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Rakesh Dhiman, Advocate, for the petitioner.
Mr. JS Hooda, 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?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 10.10.2014, rendered by Civil Judge (Jr. Divn.), Mewat, application moved by the petitioner-plaintiff, under Order 6 Rule 17 of the Code of Civil Procedure, had since been dismissed. The reasons assigned by the trial court in support of its order read as thus:

“After taking into consideration the rival contention, this court is of the considered view that present application is devoid of merits and it is liable to be dismissed because it is the second application for amendment filed by the plaintiff and no satisfactory reasons have been given in the

application that why the facts as mentioned in the application were not pleaded in the first application for amendment. A careful perusal of the file shows that vide order dated 25.1.2013 an amendment in the plaint was allowed and thereafter issues in the present case were framed and two witnesses were got examined by the plaintiff. Suddenly on 14.3.2014 the present application seeking amendment was filed by the plaintiff which is clearly after a gap of more than one year of filing of the first amendment application. The reason given by the plaintiff for seeking amendment, is not sufficient because if such a proposition is allowed, then every plaintiff will time and again seek amendments by switching counsels. Amendment in the pleadings cannot be allowed at the sheer pleasure of a party because after the plaint is amended, a necessary opportunity will have be given to the defendant to file an amended written statement, new issues will crop up and plaintiff will seek fresh opportunity to lead evidence on the amended portion. Meaning thereby the prejudice will try to fill up the lacuna of his case which cannot be permitted to the prejudice of other party. Amendment in the pleadings is a matter of exception which can be availed by the party when some facts have been inadvertently left out or was not within the knowledge of the party at an earlier stage and amendment of pleadings cannot be a matter of routine for a party. Hence, application under consideration stands dismissed.”

Undoubtedly, the petitioner-plaintiff has been remiss and negligent in pursuing his cause, but the fact

remains that the trial court while adjudicating his prayer for amendment has not even remotely mentioned as to what is the relief claimed in the suit as also the nature of the proposed amendment. Needless to assert, the trial court was required to examine as to how far the amendment prayed for was relevant and crucial to the just and fair decision in the matter. Would it have a decisive bearing on the final result in the suit? Just because the plaintiff had been negligent in pursuing his claim, his prayer for amendment could not be declined. As far the delay and inconvenience, defendants could always be compensated by awarding suitable costs, even though petitioner is the plaintiff in the suit.

That being so, the revision petition is accepted and the order dated 10.10.2014 is set aside. The trial court is directed to re-decide the application moved by the petitioner-plaintiff, strictly in accordance with law, and of course by passing a comprehensive order assigning reasons in support thereof.

Needless to assert, this order shall not constitute any expression of opinion on merits of the claim of either party.

October 29, 2015
Rajan

(Arun Palli)
Judge