

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6291 of 2014 (O&M)

Date of decision:16.01.2015

Roop Ram Educare Pvt. Ltd.

....Petitioner

Versus

Exclusive Floor Owners Society

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Ashok Aggarwal, Sr.Advocate
with Mr.Alok Jain, Advocate, for the petitioner.

Mr.Shailender Jain, Sr.Advocate
with Ms.Mannu Chaudhary, Advocate, for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 12.08.2014 (Annexure P1), whereby the Civil Judge (Jr.Divn.) Gurgaon has allowed the application for amendment of the written statement of the defendant, though the dispute in controversy is extensive, regarding the rights to the usage of the public passage around the school and the interference by the respondents.

However, it is a matter of fact that the suit was filed on 18.09.2009. A perusal of the zimni orders appended as Anneuxre P5, would go on to show that the *ad interim* injunction was granted on 22.09.2009 and thereafter, it was confirmed and certain directions were issued on 05.04.2011. An order dated 10.05.2013 was also passed whereby police help was given to the plaintiffs to enforce the order dated 05.04.2011. The petitioner also filed COCP No.1298 of 2013, in which certain directions were issued and thereafter, it was disposed of with liberty to the petitioner to avail any other remedy for implementation of the orders, in case there is any non-compliance in future.

A perusal of the zimni orders, which has been appended, would go

on to show that on 10.09.2012, one PW was present and tendered his evidence and the case was fixed for 09.10.2012, for cross-examination. The said witness was present on that date but an adjournment was sought by the defendant's counsel and costs of ₹300/- was imposed, to be paid to the witness and he was bound down for 19.11.2012. On that date, one PW, Narender Kumar was present but had not brought the summoned record and he was bound down for the next date, i.e., 11.01.2013, on which date, PWs, namely, Joginder Singh, Yogesh Kumar and Narender Kumar were also present and their statements were recorded. PW2, Yogesh Kumar was also present but his cross-examination was deferred on the request of the counsel for the defendant as copy of the affidavit was given on the same day to the counsel. Accordingly, the case was adjourned to 18.03.2013. Thereafter, it seems that the Court got caught up in the application whereby the police help had been sought by the plaintiff/petitioner-School and resultantly, the order dated 10.05.2013 was passed, wherein certain directions were issued. The application for amendment was filed on 21.08.2013 for the written statement and the reply was, thereafter, filed on 09.10.2013. The said application has, now, been allowed and the defendant had been allowed to file the amended written statement.

A perusal of the order impugned, which is running into 26 paragraphs, would go on to show that at least at two points, the Trial Court has noticed that the trial has not commenced. Reference can be made to para No.7, which reads as under:

“7. The perusal of Order 6 Rule 17 CPC (supra) reflects that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 (supra), however, provides that no application for amendment shall be allowed after the trial has commenced unless

the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 (supra) would not be applicable in the present case, as the trial of the suit has not yet commenced.”

Similarly, in para No.22, it has been observed that counsel for the parties have disclosed that they are yet to lead evidence. Relevant portion reads as under:

“22. Order 6 Rule 17 (supra) declares that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of the due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial. The present suit is at the initial stage and the learned counsel for the parties have disclosed that they are yet to lead evidence.”

Thereafter again, the observations had been made in para No.24 that the case is at an early stage. Said para reads as under:

“24. The law is explicit and settled to the extent and effect that while deciding amendment application court shall not go into the merits of the case. In the present case though the facts of the instant application were within the knowledge of the applicant but the same couldn't be incorporated in the mainframe of the written statement due to oversight and ignorance of the authorized representative of the applicant and the counsel. Though proviso in order 6 rule 17 of CPC put a bar on amendment of pleading, but through various judicial pronouncement, Hon'ble Apex courts, have clearly hold that amendment in pleadings shall be construed liberally and the same be allowed in the interest of justice. It is here to be mentioned that by the proposed amendment, nature of suit is not going to change and it will not cause any irreparable loss. The case is also at its early stage.”

Thus, it is apparent that the order of the Trial Court is absolutely based on wrong premises, as admittedly, as noticed above, the evidence has been partly led and the witnesses have also been examined. In such circumstances, the reasoning given, while allowing the amendment, cannot be held to be justified. The power to allow the amendment under Order 6 Rule 17 CPC has been dealt with in detail and the case law has been discussed as to whether the amendment is to be allowed, as per the precedents. However, in respect of the fact that the evidence has partly been recorded and the fact of trial having commenced, has been lost sight by the Trial Court.

In such circumstances, the order impugned cannot be sustained, in any manner. This Court has noticed the zimni orders whereby the statements of at least three plaintiff witnesses was recorded. A perusal of the zimni orders dated 10.09.2012 and 11.01.2013, which have been noticed above, would go on to show that statements of the witnesses were recorded. The reasoning given by the Trial Court is, thus, not justified and is based on a wrong premise. However, this Court is not opining on the merits of the case and on the issue of amendment and is only setting aside the impugned order on the ground that it was passed on a wrong premise that the trial had not commenced.

Accordingly, order dated 12.08.2014 (Annexure P1) is set aside. The Trial Court shall decide the application for amendment, afresh, in accordance with law.

16.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE