

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

CR No.8255 of 2014

Date of decision-08.12.2015

RESHAM SINGH THROUGH LRS AMARJIT KAUR

...Petitioner

VS

**PUNJAB STATE POWER CORPORATION LTD. TRENSCO AND
OTHER**

..Respondents

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

Present: Ms. Sukhpreet Kaur, Advocate
 for the petitioners.

Mr. Harsh Garg, Advocate
for respondents No.1 & 2.

RAJ MOHAN SINGH, J (Oral)

[1] Petitioner has assailed the order dated 09.10.2014 vide which application for impleading Tower Line Survey and Construction Organization as party defendant has been rejected by the Civil Judge (Junior Division) Kapurthala. Suit for mandatory injunction directing the defendants for removing 132 K.V wires (Khera Mandir) passing over the house of the plaintiff and boundary wall constructed in the land bearing khasra No.316/1-13 was filed by the plaintiff (husband of the petitioner). The said suit was filed against the original defendants.

[2] In the written statement filed by the original defendants,

specific plea was raised in preliminary objection No.5 that Tower Line Survey & Construction (TLSC) Organization is the necessary party. In the absence of said organization, suit cannot proceed. The written statement was filed on 02.11.2010.

[3] The plaintiff by way of filing replication denied the averments made in the written statement and claimed that the said organization is not a necessary party and the suit is not bad for mis-joinder and non-joinder of necessary parties. Other pleas have also been denied. Issues were framed in this case on 24.02.2011. Husband of the petitioner died on 22.05.2013. An application under Order 1 Rule 10 CPC has been filed by the present petitioner on 15.09.2014 seeking impleadment of the aforesaid organization on the ground that now the plaintiff has come to know that the aforesaid organization is necessary party as the main work of said organization is to lay down and shifting of electric line.

[4] Prayer has been made to implead the said organization on the ground that the organization is necessary to be impleaded. This application has been contested by the defendant on the ground that despite specific objection in the written statement, plaintiff denied the same by claiming that organization is not a necessary party. Now after

more than three years, even the cause against the proposed defendant has become time barred. The petitioner had the knowledge of this fact from the date of filing written statement. Even limitation of three years for seeking relief against the proposed defendant has also lapsed.

[5] Such an impleadment has relevant nexus with the pleadings. Even the pleadings cannot be allowed to be amended in the present context particularly when the trial has already commenced, evidence of both the parties have been concluded and now the case is fixed for rebuttal and arguments.

[6] In view of observation made in **Naib Singh Vs. Harnek Mohd. & Khair Din & ors 2010 (4) R.C.R (Civil) 970**, this Court finds that the objection raised by the respondent at this stage is worth acceptance particularly when initial opportunity accrued to the petitioner at the time of objection raised by the defendant in the written statement was not availed. Rather, stand was taken converse to the present application that the proposed defendant is not necessary party at all. Even, in the application filed for impleading the said organization as necessary party, the pleadings are conspicuously silent in respect of date of acquiring knowledge as to when the

applicant came to know that the said organization is necessary party.

Rather the plaintiff-petitioner has stepped into shoes of her husband.

[7] The pleadings in the plaint and replication are the pleadings which have been adopted by the petitioner and now the petitioner cannot wriggle out of the pleadings wherein specific stand was taken by the plaintiff that the proposed defendant is not at all necessary party to the suit. The plaintiff being *dominus litus* at the relevant stage opted voluntarily not to implead the organization as necessary party. Now she cannot turn around to say that on account of death of her husband a new cause of action has accrued to her. Even the application/ pleadings in this context are silent.

[8] Learned counsel has also relied upon **2013 Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P.Ltd. And others, 2013 (2) R.C.R (Civil) 875** to contend that the Court can at any stage of proceedings, either on the application made by the parties or otherwise, direct impleadment of any person as party who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary party for effective and complete adjudication of the issues. Since the husband of the subsequent petitioner who was plaintiff at the relevant time pleaded in the replication that the proposed

addition of the organization is not necessary and said organization is not necessary and proper party.

[9] Therefore, the cited precedent has no relevancy, even otherwise facts involved in the aforesaid case were in the context of impleading subsequent vendees and the principles highlighted therein have no application in present set of circumstances.

Having considered the submissions, I find no merits in this case, this revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 08, 2015

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