

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8309 of 2014 (O&M)

Date of decision: January 08, 2015.

M/S CONVENIENCE ENTERPRISES PVT LTD

... **Petitioner**

v.

M/S OZO MEDIA ESTATE LTD & ORS

... **Respondents**

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

Present: Shri Akhil Sachar, Advocate, for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

The petitioner-plaintiff is aggrieved of order dated 20.11.2014 passed by the lower court whereby application under Order VI Rule 17 CPC for amendment of the plaint was dismissed. By way of amendment in the plaint, the plaintiff, petitioner herein, had sought recovery of an additional amount of Rs.1,55,57,586/-. The original suit preferred by the plaintiff, seeks a decree of recovery only of Rs.12,19,835/-.

2. Counsel for the petitioner has claimed that even though the points on which amendment in the plaint is sought, were already in the knowledge of the petitioner-plaintiff and were duly considered while arriving at the amount for which the decree was originally sought, even then the amendment sought in the plaint could not have been rejected as the same is allowable even at the appellate stage. To buttress his claim, counsel for the petitioner has made reference to the following judgments: -

1. Arun Kumar Vs. Santosh Jain 2013 SCC Online 14439 (P&H).
2. Harbans Singh Batra Vs. Gurpreet Singh CR No.2109 of 2011
3. Sardar Hari Bachan Singh Vs. Major S. Har Bhajan Singh and another AIR 1975 P&H 205.

4. Ashwani Aggarwal Vs. Shanti Lal 2008 (3) PLR Vol. CLI.
5. Amrik Singh and another Vs. Amitabh Singh and others MANU/PH/3169/2010.
6. B.K.N. Narayana Pillai Vs. Parameshwaran Pillai, AIR 2000 SC 614.
7. Om Parkash Vs. Mukesh Kumar MANU/PH/1319/2014
8. Surinder Singh Vs. Nirmal Singh MANU/PH/1323/2014.

3. There is no dispute about the law laid down in these authorities and there cannot be any. But the facts of the case in hand are quite different.

4. It is also necessary to refer to the role, tenor and temperament as also conduct of the petitioner-plaintiff in prosecuting the suit. Application for amendment therein was filed on 08.01.2009, reply to which was preferred by the opposite contesting party on 25.02.2010.

5. At this stage, it is to be determined as to whether the application moved by the petitioner-plaintiff for amendment of the plaint is genuine and bona-fide? It is also to be seen as to whether this amendment sought to be introduced in the plaint advances the cause of justice or defeats the same irrespective of merits of the amendments sought in the plaint?

6. Record of proceedings of the suit placed on the paper book sufficiently reveals that the petitioner-plaintiff had been taking the proceedings very casually and had never pressed his application for amendment of the plaint filed on 08.01.2009 and continued procrastinating the matter. Merely because the defendants have not filed the written statement (filing of which was delayed apparently due to the conduct of the petitioner-plaintiff in prosecuting its cause in the suit), is not a ground to allow the application which apparently was made merely to delay and dilate the proceedings in the suit. Had the petitioner-plaintiff pressed its

application for amendment in the plaint and had not procrastinated the matter, there was no reason for the suit not to have progressed further. Normally a suit instituted on 24.12.2007 should not have continued and must have been decided by now.

7. Dealing with the matter of amendment of the pleadings, the Hon'ble Supreme Court in Revajeetu Builders & Developers v. Narayanaswamy & Sons, 2010(1) RCR (Civil) 27 (SC), discussing the entire English as well as Indian law with respect to factors to be taken into consideration while dealing with applications for amendment, in para 66 to 70 of this judgment, held as under:-

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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."

8. When we apply these tests to the present case, it is clear that:-

i) amendment sought for is neither required nor proper for effective adjudication of the case;

ii) the application for amendment, as has already been held, to suffer repetition, is merely to delay and dilate the proceedings and is mala-fide;

iii) if this amendment is allowed, it would cause serious prejudice to the other side, which is not compensable in terms of money;

iv) refusing the amendment rightly leads to justice and avoids multiplicity of litigation;

v) proposed amendment constitutionally and fundamentally changes the nature and character of the case and also takes into consideration facts and circumstances which had already been taken care of by the plaintiff at the time of instituting the case by way of original plaint; and

vi) even when we examine the amendment sought for, it is apparent that if a fresh suit on the amended claim is filed, it would be barred by limitation on the date of application.

9. Since the matter for amendment is serious one, on consideration of these aspects, it is nothing but mala-fide and dishonest exercise by the plaintiff.

10. Initially, the suit was for seeking a decree of recovery of Rs.12,19,835/-. Now by way of amendment, it is sought to be converted into a suit for a decree for recovery of Rs.2,16,78,600/-.

11. The proposed amendment is primarily based on documents dated 9.1.2006 and 10.1.2006 which were not only in the knowledge of the plaintiff at the time of filing of the suit but had also been filed by it with the

plaint itself. Thus, duly considering these documents, the plaintiff had confined its claim only for recovery of Rs.12,19,835/-.

12. There is absolutely no reason forthcoming as to what has transpired later to claim additional amount of Rs.1,55,57,586/-. There is no such case that this plea could not be taken by the petitioner/plaintiff earlier at the time of institution of the suit due to some fortuitous reasons. The suit is pending for the last seven years. It is being pursued casually. It has become a luxury litigation for the parties. There is no change of circumstances supporting the amendment in the plaint. Amendment sought in the plaint is neither bona-fide nor genuine nor even has any explanation as to why the amount now sought, had not been demanded earlier when the documents on which claim for additional amount is based were duly considered by the plaintiff at the time of the filing of the original suit and then the amount of recovery was confined only to Rs.12,19,835/-.

13. If the amendment is allowed, practically this would amount to substitution of the earlier plaint with the entirely new one, with new cause of action and new relief sought for by the plaintiff. There is clear admission of the plaintiff in considering the amount of the bills of 9.1.2006 and 10.1.2006 and then arriving at an amount of Rs.12,19,855/- which admission is sought to be withdrawn by way of this amendment without any explanation or reasons put forth in the application for amendment of the plaint.

14. The application rather, is nothing but is misuser of the process of the court. Since the suit has already been considerably delayed in its disposal, the lower court would decide it within six months by taking the written statement of the defendants on record and thereafter giving three opportunities to each of the parties to lead their evidence.

15. Courts should not be taken casually by the litigants. To remove

such impression that the matter can be delayed and dilated in the courts at the will and wish of the parties, it is directed that the trial court would adhere to the time limit and would conduct even day to day proceedings if found necessary.

16. The revision petition is dismissed with costs which are quantified at Rs.5,000/-.

January 08, 2015.
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[Dr. Bharat Bhushan Parsoon]
Judge

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*