

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.8368 of 2014(O&M)
Date of decision: 10.02.2015

Satjit Singh

....Petitioner

Versus

Kamaljit Singh and others

...Respondents

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

Present: Mr. Avninder Kumar Kalsy, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

Civil Misc. No.1729-CII of 2015

Prayer made in the present Civil Misc. Application for placing copies of plaint and written statement Annexures P/6 and P/7 respectively on record is allowed subject to just exceptions and for the purpose of deciding the present revision petition only.

Annexures P/6 and P/7 are taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

CR No.8368 of 2014

Challenge in the present revision petition filed belatedly is to the order dated 24.2.2014 (Annexure P/3) whereby the Civil Judge (Junior Division), Ludhiana has partly allowed the application filed by the petitioner-defendant and allowed amendment of the pleadings in the written statement to the extent of the date of sale deed and the same is allowed to be read as 18.5.1999. The other part of the amendment has been denied on the ground that the plaintiff had led his evidence and cross-examination had been conducted and the case was at the stage of defendants' evidence. Thus, keeping in view the proviso of Order 6 Rule 17 CPC and fact that no justification has been given as to why the amendment had been sought, earlier the relief has been declined.

Counsel for the petitioner has vehemently submitted that the petitioner had filed joint written statement with his father Shiv Dev Singh, who originally was arrayed as defendant no.2 and on account of his death on 19.5.2008, necessity has arisen for amending the pleadings. It is accordingly argued that it would only help to resolve the whole controversy between the parties who are closely related being the legal representatives of Shiv Dev Singh.

A perusal of the paper book would go on to show that the suit for declaration was filed by respondent no.1 seeking the relief that he was owner of various properties mentioned in head note of the plaint. He also sought a declaration that mutation on the basis of sale deed dated 18.5.1999 was liable to be set aside. The initial written statement was filed on 24.10.2007 by the petitioner and his father who is thereafter alleged to have expired in the year 2008 as noticed above. The petitioner filed an application on 1.11.2013 for amendment of the written statement taking the plea that the suit of the plaintiff was collusive with defendants no.3 and 4 who are his brothers. The said application was dismissed on 22.1.2014 (Annexure P/5) by the trial Court on the ground that the applicant has failed to prove on record as to what had estopped him from taking the said plea at the time of filing the written statement and the case was at the stage of plaintiff evidence. The trial had commenced and it was noticed that the case was more than 10 years old and the amendment was not necessary as it would be taken care of during the course of trial.

Thereafter, application dated 19.2.2014 was filed seeking to incorporate certain facts in para 6 and also for amendment of the date of the sale deed in the written statement to 18.5.1999 instead of 15.3.1998. The application was contested by the plaintiff on the ground that evidence of the plaintiff had been closed and case was fixed for evidence of the defendants and the said application was only filed to cause delay. The plea which he was seeking could have been taken earlier at the time of filing of previous application

for amendment of the written statement which already stood dismissed. Resultantly the impugned order has been passed.

The principle for amendment of the written statement may be liberal but the factum and relevance of amendment which is now sought in the application under Order 6 Rule 17 CPC could not be explained before this Court as to how the said pleadings are necessary. It is settled principle that to allow amendment the relevance of the amendment is to be explained which in the present case has not been demonstrated. In para No.6 of the plaint reference has been made to the property measuring 627 sq. yards and sale deed executed by Manjit Kaur, mother of the parties who had expired on 2.12.2000. The plea taken in the written statement filed by the petitioner and his father at that point of time was that the mother Manjit Kaur had executed a sale deed in favour of defendants out of free will and it was a legal document. The amendment pertains to other properties which were subject matter of other paragraphs and in such circumstances, the amendment sought does not seem to have any relevance which could help the Court for adjudicating upon the plea taken in para 6 of the plaint and the written statement.

Another factor which is to be taken into consideration is the stage of the proceedings as admittedly the suit is of the year 2002. The plaintiff has completed his evidence and it is apparent that it is the second application for amendment as the first one had been dismissed on 22.1.2014. The argument that his father has expired and plea could not be taken does not cut much ice with the Court. Admittedly, the father of the petitioner was died in the year 2008 and the present application has filed after a period of almost of six years and therefore, there is no justification for the delay. Even otherwise, it is settled principle that once the evidence has started, only if the petitioner had shown due diligence then the Court could have exercised its power of amendment but in the present case no such due diligence had been shown. Reference can be made to the observations of the Apex Court in **Ajendraprasadji N. Pande &**

another Vs. Swami Keshavprakesh-dasji N. & others (2006) 12 SCC 1

wherein it has been held that for the grant of indulgence for amendment due diligence is necessary. The relevant observations read as under:-

“54. In our opinion, the facts above-mentioned would also go to show that the appellants are lacking in bona fide in filing this special leave petition before this Court. It is also to be noticed that the High Court has recorded relevant points in its elaborate judgment dated 05.10.2005 and have been dealt with despite the opposition of the contesting respondents that these pleas were not taken in the written statement. Under these circumstances, non-seeking of appropriate amendment at appropriate stage in the manner envisaged by law has dis-entitled the appellants to any relief. The amendment, in our view, also seeks to introduce a totally new and inconsistent case.

55. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.

56. An argument was advanced by Mr. Parasaran that affidavit filed under Order 18 Rule 4 constitutes Examination- in-Chief. The marginal note of order 18 rule 4 reads recording of evidence. The submission is that after the amendments made in 1999 and 2002 filing of an affidavit which is treated as examination in chief falls within the amendment of phrase recording of evidence.

57. It is submitted that the date of settlement of issues is the date of commencement of trial. [**Kailash vs. Nankhu & Ors.** (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).

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61. We can also usefully refer to the judgment of this Court in **Baldev Singh V. Manohar Singh (2006) 6 SCC 498** for the same proposition. A perusal of the proposed amendment would show that it contains numerous averments. So far as the averments in the proposed amendments are concerned, at p. 12 of the order in para 22, the appellants admit that all the issues raised by way of proposed amendment in the written statement were taken before this Court in the appeal from order filed by the present defendants in the civil appeal filed before this court and again in the special leave petition filed subsequently. As rightly pointed out by learned Senior Counsel, any section should not be so interpreted that part of it becomes otiose and meaningless and very often a proviso itself is read as a substantive provision it has to be given full effect.”

Accordingly, keeping in view the above principles and the fact that nothing was even mentioned in the application regarding due diligence aspect and for what reason the amendment could not have been sought earlier at the initial stage, this Court is of the opinion that the trial Court was well justified in only partly allowing the application and the impugned order does not warrant interference under Article 227 of the Constitution of India.

Accordingly, the present revision petition is dismissed.

10.02.2015
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(G.S.SANDHAWALIA)
JUDGE

PRADEEP KUMAR ARORA
2015.02.19 16:29
I attest to the accuracy and integrity
of this document
Punjab and Haryana High Court,
Chandigarh