

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.8866 of 2014
Date of decision:05.01.2015

Harbans Singh & another

....Petitioners

Versus

Major Singh

.....Respondent

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

Present: Mr.Randeep Singh Rana, Advocate, for the petitioners.

G.S.Sandhawalia J.(Oral)

Prayer in the present revision petition, filed under Article 227 of the Constitution of India, by the plaintiff-petitioners, is for setting aside the order dated 03.11.2014 (Annexure P5), passed by the Addl.Civil Judge (Sr.Divn.) Khanna. Vide the said order, the Trial Court has allowed the application, filed by the respondent-defendant, under Order 6 Rule 17 CPC and permitted the amendment of the written statement wherein the factum of the withdrawal of the earlier suit for permanent injunction has been incorporated.

The reasoning given by the Trial Court is that the defendant had filed written statement on 06.10.2010 and the injunction suit was withdrawn by the plaintiff on 19.11.2010, after the filing of the written statement and it being a subsequent event, the amendment was permissible. The law being more liberal compared to the amendment of the plaint, costs of ₹2000/- were imposed and the case was fixed for filing replication.

Counsel for the petitioners has vehemently submitted that there was delay in filing the application and it should not have been allowed at this stage.

The present suit is for specific performance, filed by the plaintiff-petitioners, pertaining to an agreement to sell dated 15.12.2009. In the suit itself,

there was mention of the first suit filed for permanent injunction, wherein specific averment has been made that the cause of action arose on the date of execution of the agreement to sell and on 21.06.2010, when the defendant did not come present for the registration of the sale deed.

Since the earlier suit was withdrawn after the filing of the written statement, the Lower Appellate Court rightly allowed the amendment since necessary facts have been brought on record regarding the pendency of the earlier suit, reference of which was there in the plaint itself. The said amendment would rather help the Court to come to a valid conclusion and in deciding the controversy arising between the parties. The Apex Court in **Revajeevu Builders & Developers Vs. Narayanaswamy & Sons & others 2009 (10) SCC 84** has laid down principles for allowing the application for amendment, which read as under:

“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.”

Costs of ₹2000/- has been imposed for the delay caused. It is settled principle that delay is not a ground, as such, on account of which the amendment is to be rejected.

Accordingly, finding no illegality or irregularity in the impugned order which could warrant interference of this Court under Article 227 of the Constitution of India, the present revision petition is hereby dismissed, being bereft of any merit.

05.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE