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

Civil Revision No.2922 of 2015

Date of Decision: 27.08.2016

Kanwal Mohan and others

.....Petitioners

Vs

Amit Gupta and another

.....Respondents

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

Present:Mr. Harsh Bunger, Advocate
for the petitioners.

Mr. J.K. Chauhan, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 04.03.2015 (Annexure P-4) passed by the Civil Judge (Jr. Divn.) Panchkula whereby the application under Order 6 Rule 17 CPC for the amendment of the plaint was dismissed.

[2]. Plaintiff/petitioners filed a suit for declaration to the effect that plaintiffs and defendant Nos.1 and 2 are entitled to 1/6th share in the FDR's and Post Office Senior Citizen Saving Schemes account of late Smt. Raj Rani i.e. mother of the parties. Four were the plaintiffs and remaining two were the defendants in the suit, out of which Kapil Sen Gupta was the

proforma defendant. Suit was filed on 20.09.2013. Defendant No.1 in the written statement took the following stand:-

“3. That the content of para No.3 of the plaint are incorrect and denied. It is incorrect that after the death of Smt. Raj Rani her succession opened. It is incorrect that after the death of Smt. Raj Rani the plaintiffs and defendant No.2 are entitled to share in the aforesaid moveable property. As a matter of fact the answering defendant inherited the entire moveable property of his mother being her nominee. The plaintiffs and defendant No.2 have no share nor they are entitled to any share in the moveable or immoveable property of Smt. Raj Rani.”

[3]. The written statement was filed on 18.02.2014. Perusal of the written statement shows that defendant No.1 was the nominee of the mother of the parties. It is a settled principle of law that nominee is entitled to deal with the account, not to the disadvantage of other claimants. He would be a custodian of the property subject to entitlement of other persons therein. Nominee cannot claim title to the property exclusively to the disadvantage of other heirs like the plaintiffs herein.

[4]. On coming to know the aforesaid stand more

particularly the stand that defendant No.1 has used the amount and necessity arose for the plaintiffs to seek amendment of the written statement thereby introducing prayer for recovery of the amount as defendant No.1 had encashed the FDR's and had also withdrawn the amount from the Post Office Senior Citizen Saving Scheme Account of late Smt. Raj Rani.

[5]. Following paragraphs were sought to the amended:-

- “ a) *In the head note of the plaint after the words “..... accounts of late Smt. Raj Rani”, the following be added “total amounting to Rs.22,85,374/- and for recovery of Rs.15,23,580/- which is the 1/6th share each of the plaintiffs in the FDRs and post office saving scheme accounts alongwith the pendent-lite interest and future interest @ 12% per annum.*
- b) *In para 10 of the plaint after the words “....for purposes of court fee and jurisdiction is Rupees the figure 400/- be deleted and the figure 15,23,580/- be substituted. After the words..... on which a court fee of Rupees, the figure 25/- be deleted and the figure 85,800/- be substituted.*
- c) *In the prayer clause after the words “.....account of late Smt. Raj Rani” and before the words “.....be passed”, the following be added “total amounting to Rs.22,85,374/-*

and for recovery of Rs.15,23,580/- which is the 1/6th share each of the plaintiffs in the FDRs and post office saving scheme accounts alongwith the pendent-lite interest and future interest @ 12% per annum.”

[6]. The aforesaid proposed amendment was claimed to be just and proper in order to avoid the multiplicity of the litigation and to enable the Court to decide the controversy in just and proper manner.

[7]. The prayer for amendment was opposed by the defendant No.1 on the ground that the same is belated. Issues have already been framed. Plaintiffs have already availed three effective opportunities to lead evidence. On third opportunity for leading evidence the present application came to be filed as on that day no evidence of the plaintiffs was present. Since the trial has already commenced, therefore, as per proviso, the amendment cannot be allowed. The ingredients of Order 6 Rule 17 CPC were claimed to have not been satisfied by the applicant/plaintiffs.

[8]. Having considered the controversy as per the facts brought on record, I am of the view that in the present case, the additional prayer of recovery is sought to be made along with

original prayer for declaration as incorporated in the plaint. The additional relief/prayer is not to be found to be barred by limitation as maturity of the FDR No.1 was upto 02.02.2015, in respect of FDR No.2 it was upto 05.01.2015. The suit was filed on 20.09.2013, therefore, the cause of action would not be barred by any limitation.

[9]. Defendant No.1 disclosed the factum of his being nominee of his mother in para No.3 of the written statement and factum of withdrawal of the amount. In para No.5 of the written statement defendant No.1 projected a stand that he was every right to use the money in the manner he likes and he was not required to pay the share of each of the plaintiff as per his capacity as nominee of the deceased mother.

[10]. The filing of application under order 6 Rule 17 CPC on 07.11.2014 cannot be found to be belated and the cause of action introducing the amendment cannot be found to be barred by any limitation. Power to allow amendment is wide enough to cover the controversy in question. The basic purpose of allowing amendment is to minimise the litigation. In the instant case, suit for declaration is already pending at the stage of plaintiffs' evidence. Since the factum regarding defendant No.1 being nominee and user of the amount came to fore only in the written

statement filed by defendant No.1, therefore, in order to scuttle multiplicity of litigation, it would be in consonance of the law and equity that the additional prayer for recovery of amount is to be allowed by way of incorporating necessary pleadings to that effect in the plaint.

[11]. Since the additional plea which is sought to be added is not found to be barred by any limitation, therefore, the claim of the petitioners can be considered. It is a settled principle that all amendments which are necessary for the purpose of determining real issues between the parties, should be allowed, if it does not change the basic nature of the suit. Additional change in the nature of relief would not amount to change of nature of suit by any stretch of imagination. The prayer for amendment can be exercised in larger interest of doing full and complete justice between the parties. It is a settled principle of law that, if grant of amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. The proposed amendment is fully in consonance with the pleadings of the parties and would definitely prevent multiplicity of litigation between the parties. If, this amendment is declined, the plaintiffs have to file a second suit for recovery of the amount and the same would be totally against the underlining principles of amendment. The grant of amendment

in the present case would really serve the ultimate cause of justice and would also avoid further litigation between the parties and would bring the present controversy to a halt.

[12]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The Court should not record any finding on merits of the amendment. The merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

[13]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[14]. It is true that normally amendment should not be

allowed after commencement of the trial unless and until, the Court is satisfied that despite due diligence the same could not be sought earlier. Keeping in view the stand taken by the defendant No.1 for the first time in the written statement, filing of application for amendment promptly thereafter would not be in any case inconsistent with the requirement of due diligence and knowledge. Since the purpose of allowing amendment is to minimise the litigation and the relief claimed by way of amendment is not apparently barred by any law of limitation, therefore, the prayer is legally required to be considered in the light of observations made by the Hon'ble Apex Court in **J. Samuel vs. Gattu Mahesh, 2012(1) RCR (Civil) 903** and **Ramesh Kumar Aggarwal vs. Rajmala Exports Pvt. Ltd., 2012(2) RCR (Civil) 739.**

[15]. Since the Court at any stage of the proceedings can allow either party to alter or amend his pleadings in such a manner and on such terms as made by justified, therefore, in the fitness of things the amendment in question, in considered opinion of this Court is justified in law. This Court finds strength on the aforesaid proposition from **Abdul Rehman and Anr. vs. Mohd. Ruldu and Ors., 2012(4) RCR (Civil) 481.**

[16]. In the light of aforesaid, the impugned order dated

04.03.2015 passed by the Civil Judge (Jr. Divn.) Panchkula is hereby set aside. Revision petition is accordingly allowed, thereby allowing the application under Order 6 Rule 17 CPC, however subject to payment of cost of Rs.10,000/- payable to respondent No.1. Payment of cost would be the condition precedent for allowing the amendment by the trial Court.

August 27, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No