

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3334 of 2016

Date of Decision: 11.05.2016

Tek Chand and Another

... Petitioner(s)

Versus

Smt. Chanderwati

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Arun Jindal, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 12.4.2016, passed by learned Civil Judge (Junior Division), Hodal, whereby application under Order 6 Rule 17 CPC read with Section 151 CPC, filed by the plaintiffs/petitioners, for amendment of the plaint was dismissed.

Learned counsel for the petitioners submitted that vide application for amendment of plaint, the petitioners wanted to amend para No. 7 of the suit as earlier cases qua the land in dispute titled as "Tek Chand v. Nepal and Others", pending in the Court of learned Civil

Judge (Junior Division), Hodal; appeal, pending in the Court of Commissioner, Palwal; another appeal titled as "Tek Chand v. Nepal Chand & Others", pending in the Court of learned District Judge, Palwal; after that two more cases, one titled as "Tek Chand v. Chanderwati & Others" pending in the Court of learned Civil Judge (Junior Division), Hodal and criminal complaint under Section 420 IPC, pending in the Court of Sub Divisional Judicial Magistrate, Hodal and earlier an appeal under Order 39 Rules 1 & 2 CPC read with Section 151 CPC, decided by the Sessions Court, Palwal could not be mentioned in the original plaint.

Learned counsel for the petitioners further submitted that necessity to amend the plaint has arisen because of change of counsel and the proposed amendment goes to the root of the case and the only object is to describe the previous litigations between the parties. On this point, reliance was placed upon the judgment rendered by Hon'ble the Apex Court in ***Abdul Rehman and Another v. Mohd. Ruldu and Others 2012(4) RCR (Civil) 481*** and view taken by this Court in ***Sarabjit Kaur v. Joginder Sharma Bamra and Others 2016(1) PLR 719***, wherein application for amendment was allowed by way of revision petition.

Having considered the submissions made by learned counsel for the petitioner, appraisal of the record of the case, this Court is of the considered view that the facts of the present case are distinguishable from that of judgment rendered by Hon'ble the Apex Court in ***Abdul Rehman 's case (supra)*** and of this Court in ***Sarabjit Kaur's case (supra)***. The Court below has already taken the correct

view that the application has been filed when both the parties have already led their respective evidence and the case is fixed for rebuttal evidence and arguments. The present application is an attempt to fill up the lacuna, which is legally not permissible. In the present case, trial of the case had already commenced and the application for amendment of plaint has been filed at much belated stage. The amended provisions of Order 6 Rule 17 CPC read as under:-

"17. Amendment of Pleadings.-the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The above provisions make it ample clear that amendment of pleadings can be allowed before commencement of the trial. The only exception that if the Court comes to the conclusion that amendment sought for is essential and the same could not be sought for earlier, despite due diligence.

The present set of facts established that petitioners could move such an application at earlier stage because this fact was well

within their knowledge right from the beginning and by exercising due diligence, these facts could be incorporated in the original plaint.

Similar matter was before Hon'ble the Apex Court in ***J.Samuel and Others v. Gattu Mahesh and Others 2012(1) RCR (Civil) 903***, wherein it was observed as under:-

"12. *The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*"

In the present case, if the petitioner had exercised due diligence that means counsel representing the petitioners had engaged

in due diligence to determine and had gone through the documents, then there would not have been any such necessity. But at any rate the requirement of law is that a party requesting the relief stemming out of the claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

In the present set of facts, there is a clear lack of "due diligence" and the mistake committed does not come within the purview of typographical error and the Court below has rightly dismissed the application.

Consequently, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 11, 2016

"DK"