

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Revision No.5311 of 2015 (O&M)

Date of Decision: 05.01.2016

Sarabjit Kaur

.....Petitioner

Versus

Joginder Singh Bamra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Kushagra Mahajan, Advocate, for the petitioner.

Mr. Ashok Kumar Arora, Advocate,
for respondent Nos.2 and 3.

SHEKHER DHAWAN, J

Present revision petition is challenge to the order dated 22.07.2015, passed by Civil Judge, Junior Division, Amritsar whereby the application for amendment of plaint under Order 6 Rule 17 read with Section 151 CPC, filed by the petitioner, was dismissed.

2. Relevant facts of the case that petitioner had filed the suit seeking relief of injunction against alienation of the property as well as declaration seeking cancellation of the sale deed/transfer deed, if any, executed by the defendant No.1 in favour of defendant Nos.2 and 3 in respect of the suit property. The said suit was filed on the basis of

agreement of sale dated 21.01.2013 allegedly executed by defendant No.1 in favour of plaintiff and the target date for execution of sale deed was 20.12.2013. The grounds taken in the application for seeking amendment in the plaint were that the plaintiff is an illiterate lady and was not made aware by her previous counsel and was not properly guided and that is why she could not file the suit for possession by way of specific performance of agreement. The suit for permanent injunction was filed on 4.01.2014. In reply to the application filed by respondent Nos.2 and 3 before the learned trial Judge, plea was taken that application for amendment is not maintainable as on the date of filing of suit itself, main suit for permanent injunction was not maintainable as the target date for execution of sale deed was 20.12.2013 and for that plaintiff was required to file suit for specific performance of agreement of sale dated 21.01.2013 and not suit for permanent injunction. Learned trial Judge while passing order under challenge dismissed the application for amendment of plaint on the ground that on 04.01.2014 suit for permanent injunction could not have been filed by plaintiff and the same was not maintainable but suit for specific performance was to be filed and as the main suit itself is not maintainable, the amendment sought for could not be allowed.

3. Learned counsel for the petitioner mainly submitted that the applicant was an illiterate lady and was totally dependent upon the legal advice from her counsel. Because of illegal advice she could not file suit for specific performance on 04.01.2014. However, when she came to know about this legal defect in the format of the suit, application for amendment of plaint was filed on 09.05.2014. Learned counsel for the petitioner also submitted that law on the point is settled that a party cannot be put to suffer

because of any wrong advice having been rendered by her counsel rather the parties should be allowed to contest their case on the basis of all the facts and evidence available on file.

4. While arguing on these points, learned counsel for respondent Nos.2 and 3 submitted that learned trial Judge has rightly dismissed the application for amendment of plaint because law on the point is settled that amendment should not be allowed in casual manner rather a very serious judicious exercise should be taken while deciding the application under order 6 Rule 17 CPC. More so, amendment cannot be allowed if the proposed amendment constitutionally or fundamentally changes the nature and character of the case. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others**, (2009) 10 Supreme Court Cases 84.

5. Learned counsel for respondent Nos.2 and 3 also submitted that if an application for amendment of plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit. Similarly in the case in hand cause of action had arisen before filing of the suit on 04.01.2014, as the target date for execution of sale deed was 20.12.2013. Such an application for amendment of plaint could not be accepted, if the suit could not have been filed on the date of institution i.e. 04.01.2014. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case **Alkapuri Cooperative Housing Society Limited Vs. Jayantibhai Naginbhai (deceased)**, (2009) 3 Supreme Court Cases

6. Having heard the learned counsel for both the parties and also having gone through the above-said judgments from Hon'ble Supreme Court, this Court is of the view that the present case is to be seen in its entirety. Most of the facts are not disputed that the agreement of sale allegedly executed by defendant in favour of plaintiff on 21.01.2013. The target date for execution of sale deed was 20.12.2013. Present suit for permanent injunction was filed by petitioner on 04.01.2014. It is not disputed in any way that on 04.01.2014 plaintiff could have and should have filed suit for specific performance and not suit for permanent injunction. Now controversy is it to be seen in the light whether plea taken by applicant that she is an illiterate lady and was dependent on the legal advice rendered by her counsel and having received ill-advice from her counsel, she could not file suit for specific performance rather filed the suit for permanent injunction. Plea has been taken in the application for amendment of plaint that on realising her mistake, application for amendment of plaint was filed which has been declined by the Court below. It is also not disputed that while allowing such an application for amendment, the Court should be very cautious while deciding such application. As regards to plea taken by learned counsel for the respondent that if the proposed amendment constitutionally or fundamentally changes the nature and character of the case, the same should not be allowed is not strictly applicable in the present case. The only plea taken for seeking amendment of plaint is on the point that because of ill-advice from her previous counsel the suit for specific performance could not be filed and only suit for permanent injunction was to be filed. It is settled proposition of law that law of procedure is meant for advancement of justice and not to create obstacles for advancement of

justice.

7. The amended provisions of order Order 6 Rule 17 of the Code, which read as follows :-

"Order 6- Rule 17. Amendment of pleadings.-

The Court may at any stage of 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."

8. Above provisions makes it ample clear that Order 6 Rule 17 commences with the words "the court may at any stage of the proceedings" and thereafter, goes on to confer a power to allow either party to alter or amend his pleadings, where it appears to the court that the amendment is necessary for the purpose of determining the real questions in controversy. The proviso, by use of the expression "Provided that no application for amendment shall be allowed after the trial has commenced" appears to place an embargo on the power of a court to allow amendment of pleadings after the trial has commenced. If the proviso were to end with this expression, it could justifiably be argued that pleadings cannot be amended after the commencement of a trial. The proviso, however, qualifies the prohibitory expression by the use of the words "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" thereby clarifying that the embargo is not absolute and the court, may if circumstances so permit, allow an amendment after the commencement of the trial.

9. The scope of Order 6 Rule 17 of CPC was discussed by Hon'ble Supreme Court in case Ajendraprasadji N. Pande & another Vs Swami Keshavprakeshdasji N. & others, 2007(1) RCR (Civil) 481, as follows :-

"32. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on Section 148 for extension of time for any purpose.

33. Ultimately to strike a balance the Legislature applied its mind and re-introduced Rule 17 by Act 22 of 2002 w.e.f. 1.7.2002. It had a provision permitting amendment in the first part which said that the Court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration.

34. Reliance was placed on the judgement of this Court in Salem Bar Association case (supra). In this case, this Court dealt with Order 6 Rule 17 at para 26. Chief Justice Y.K. Sabharwal speaking for the Bench observed as under :-

"Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act, 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

39. It is to be noted that the provisions of Order VI Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.

40. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless inspite of due

diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order VI Rule 17 was due to the recommendation of the Law Commission since Order 17 as it existed prior to the amendment was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the Amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of Courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their Court case and manifests the absence of due diligence on the part of the appellants disentitling them to relief."

10. Above provisions revealed that even after the commencement of a trial, the power of the Court to amend the pleadings, subsists, but the Court must consider the facts that the amendment is necessary for the purpose of determining the real controversy and if the applicant satisfies the Court that despite the exercise of due diligence, he could not raise the pleadings before the trial commenced, allow such a prayer, even after the commencement of the trial.

11. As in the case, the applicant has come with the plea that she has disclosed all the relevant facts to her counsel and entrusted all relevant documents to her counsel. The error in raising the pleadings, as instructed, was on the part of her counsel, who failed to incorporate the pleadings and properly drafted the suit. A party, reposes implicit faith in her counsel and if a counsel commits a bona-fide error, despite having received all relevant documents and instructions from a party, a litigant cannot be punished for

the error of her counsel. Such a party is certainly entitled to take a plea and make out a case for seeking amendment of pleadings on the ground which is squarely covered within the meaning of expression "due diligence". Such a view was taken by a Co-ordinate Bench of this Court in case **Ramanand Vs. Sedhu and others**, 2010(2) R.C.R. (Civil) 31. As the amendment sought for in the present case is necessary for the purpose of determining the real questions in controversy and the trial Court should have allowed the prayer for amendment.

12. In view of above, this Court is of the view that the proposed amendment was required to be allowed by the Court below so as to determine the real controversy. Accordingly, the present revision petition is allowed and the order dated 22.07.2015 passed by learned Civil Judge, (Jr. Div.), Amritsar is set aside and the application for proposed amendment in the plaint is allowed, subject to the payment of costs of ₹20,000/.

January 05, 2016

naresh.k.

(SHEKHER DHAWAN)
JUDGE