

Civil Revision No.5362 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5362 of 2016

Date of Decision:22.8.2016

Gurpreet Singh and another

---Petitioners

vs.

M/s A.K.M. Enterprises Private Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Abhilaksh Grover, Advocate
for the petitioners

Rekha Mittal, J.

The present petition directs challenge against order dated 4.5.2016 passed by the Additional District Judge, Jalandhar whereby application filed by respondent No. 1 under Order 6 Rule 17 of the Code of Civil (in short “CPC”) Procedure for amendment of reply to the petition under Order 39 Rule 2-A CPC has been allowed.

The petitioners have filed a suit for declaration assailing unilateral termination of letter of intent dated 15.11.2006 executed between the parties in regard to booking for purchase of anchor space at ground floor, detailed in head note of the plaint, being illegal, null and void and letter of intent dated 15.11.2006 continues to be subsisting, enforceable and binding upon the defendants/respondents. Further relief has been sought for grant of mandatory and permanent injunction. In the suit, the trial court passed an order of injunction and the petition under Order 39 Rule 2-A CPC was filed alleging willful and intentional disobedience of order and committing contempt of Court.

The respondents filed their response to the application under Order 39 Rule 2-A CPC but later sought to amend para 5 of the reply by way of addition of facts incorporated in para 2 of the impugned order, extracted hereinbelow:-

“Inadvertently and due to over sight the factum of that after exchange of notice issued by Sh.Umesh Dhingra, Advocate duly signed by Gupreet Singh to Shoppers Stop Limited and reply dated 27.4.2012 to said notice by Sh. Rishi Aggarwal of Aggarwal Law Associates, copies of

which are Ex. R.1 and R.2 and caveat petition under Section 148-A filed by Shoppers Stop Limited on 23.5.2012 in the Court of Civil Judge (Senior Division), Jalandhar accompanied by an affidavit and proof of dispatch of registered notice to Gurpreet Singh and Manjit Singh on the basis of registered document dated 15.2.2012 they were in possession of the premises in dispute, leave no manner of doubt of due notice to the present respondent about leasing of property on 15.2.2012 by the present applicant.”

After filing of reply to the application by the petitioners and having heard counsel for the parties at length, the learned trial court allowed the application vide impugned order.

Counsel for the petitioners has assailed the impugned order primarily on two counts. The first submission made is that a similar amendment was sought to be made in reply to the application for grant of interim injunction filed under Order 39 Rules 1 and 2 CPC but the same has not been allowed by the trial court, therefore, the trial court has committed a serious error rather illegality in allowing the amendment in reply to the

application under Order 39 Rule 2-A CPC. Another submission made by counsel is that the respondent has miserably failed to satisfy the requirements of proviso appended to Rule 17 of Order 6 by way of amendment in the year 2002, therefore, the proposed amendment is hit by law. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India *Ajendraprashadji N. Pande and Another vs. Swamin Keshavprakeshdasji N. and others 2007(1) RCR (Civil) 481*.

I have heard counsel for the petitioners, perused the paper book but find that the petition sans merit and deserves to be dismissed.

Before advertng to the submissions made by counsel for the petitioners in the context of facts and circumstances of the case, it is appropriate to recall the latest position in law qua amendment of pleadings even after proviso to Rule 17 was added in the year 2002.

The Hon'ble Apex Court in *Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, 2010(1) RCR (Civil) 27*, has culled out certain factors to be taken into consideration while dealing with the application for amendment of pleadings. A relevant extract from para 67 and 68 of the judgment reads as follows:-

“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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule

17. These are only illustrative and not exhaustive.”

In *Abdul Rehman and another vs. Mohd. Ruldu and others*,
2012(4) RCR (Civil) 481, the Court has held, in para 8, reads as follows:-

“8. The original provision was deleted by Amendment Act 46 of 1999, however, 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the

litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others v. Gattu Mahesh and others, 2012 (1) Recent Apex Judgments (R.A.J) 226: 2012(1) R.C.R. (Civil) 903 : (2012) 2 SCC 300* and *Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and others, 2012(2) Recent Apex Judgments (R.A.J.) 318: 2012(2) R.C.R. (Civil) 739: (2012) 5 SCC 337*. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

In view of enunciation of law laid down in *Revajeetu Builders and Developers' case (supra)* it is difficult to accept contention of the petitioners that no amendment in the pleadings can be allowed after commencement of the trial. On the contrary, amendment can be allowed by the Court at any stage if the application is not mala fide, proposed amendment is necessary for complete and effective adjudication of the lis and the amendment does not cause such a prejudice to the adversary for which he cannot be compensated with costs.

So far as the plea that the trial court has dismissed the

application for amendment of reply to the application for interim injunction in absence of a similar amendment having been made in the written statement, the same cannot enure to benefit of the petitioners to contend that the proposed amendment cannot be allowed in reply to the petition under Order 39 Rule 2-A CPC which is a proceeding independent of the suit filed by the petitioners.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

22.8.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No