

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

CR No.5708 OF 2015
DATE OF DECISION : 11TH MAY, 2016

Roshan Lal

.... Petitioner

Versus

Ram Piari & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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Present : Mr. Chander Pal Tiwana, Advocate for the petitioner.

Mr. Vimal Singh, Advocate for respondents No.1, 3 and 4.

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DARSHAN SINGH, J.

1. The present revision petition has been preferred against the order dated 05.08.2015 passed by the learned Additional Civil Judge (Senior Division), Kaithal, whereby the application moved by the petitioner-plaintiff for the amendment of the plaint under Order 6 Rule 17 read with Sections 151 and 153 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC'), has been dismissed.

2. A notice of this petition was issued to the respondents. Respondents No.2 and 5 were duly served, but they did not appear. Respondent No.6 has refused to acknowledge the notice but affixation was made, so the service was complete.

3. I have heard Mr. Chander Pal Tiwana, Advocate learned counsel for the petitioner and Mr. Vimal Singh, Advocate for respondents No.1, 3 and 4 and have carefully gone through the paper book.

4. Learned counsel for the petitioners contended that only minor amendments were sought in the plaint. The name of defendant No.2 was to be corrected from Smt. Anguri to Smt. Anguri alias Angrejo in the title of the plaint. Secondly, in para No.3(c) defendants No.1 to 4 have been wrongly typed instead of defendants No.1, 3 and 4 and thirdly that in some of the paras the date of the agreement has been wrongly typed as 06.11.2009 instead of 26.08.2009. He contended that these are only the typographical mistakes and are not going to change the nature of the suit. He further contended that in case the amendment is allowed the petitioners will not lead any fresh evidence.

5. On the other hand, learned counsel for respondents No.1, 3 and 4 contended that the application has been moved at belated stage. After framing of issues, the plaintiff had availed sufficient opportunities to conclude the evidence and thereafter, this application was moved. The proposed amendments will result in material changes to the contents of the agreement to sell and will result in gross miscarriage of justice and prejudice to the defendants. Thus, he pleaded that the learned Trial Court has rightly dismissed the application.

6. I have duly considered the aforesaid contentions, the law is well settled that ordinarily the Court must not refuse bonafide, legitimate, honest and necessary amendment and should never permit malafide and dishonest amendments. It was further laid down that the liberal approach should be the general rule for allowing the amendments in the pleadings, particularly

in the cases where the other side can be compensated with costs. Mere delay in moving the application is also no ground to decline the request. In case ***Chander Kanta Bansal v. Rajinder Singh Anand, 2008(2) R.C.R. (Civil) 801***, the amendment of the pleadings were sought after 18 years when trial was at the verge of completion. The Hon'ble Apex Court laid down that the amendment of pleadings can be allowed by the Court even after commencement of the trial where the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. The term 'due diligence' means reasonable diligence which a prudent man would exercise in the conduct of his own affairs.

7. It is further settled principal of law that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence on the part of the counsel. The powers to grant amendment in the pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations. All the amendments, which are necessary for the purpose of determining the real questions in controversy between the parties, should be allowed if it does not change the basic nature of the suit. It is further laid down that rules of procedure are intended to be handmaid to the administration of justice.

8. In the instant case, the petitioner has sought the amendment of plaint to correct the name of defendant No.2, the date of agreement to sell mentioned in some paras of the plaint. This fact is not dispute that the date of the agreement is correctly mentioned in the headnote of the plaint, para no.1, first portion of para no.3, para no.8 and para no.11 and wrong date of agreement is only mentioned in the later portion of para no.3. There is also

some mistakes in para 3(c) with regard to description of the parties. So all these amendments, sought by the petitioner are due to typographical mistakes. These amendments are not going to change the nature of the suit and will not result in any prejudice to the rights of the defendants. Learned counsel for the petitioner has stated at bar that in case the amendment is allowed, the petitioner/plaintiff will not lead any fresh evidence. So there is no intention on the part of the petitioner to delay the proceedings of the case. Thus keeping in view my aforesaid discussion mere this fact that the application has been moved at belated stage, cannot be a ground to decline the request for amendment of the plaint as the amendment sought are only the typographical errors in the original plaint. Such amendments and corrections are necessary for determining the real questions in controversy between the parties.

9. Consequently, the present revision petition is hereby allowed. The impugned order dated 05.08.2015 passed by the learned Trial Court is hereby set aside. The application moved by the petitioner-plaintiff for amendment of plaint is allowed subject to ₹5,000/- as costs. The petitioner-plaintiff will also not be entitled to lead any fresh evidence.

11th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE