IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6715 of 2016 (O&M)
Date of Decision: 19.10.2016

Inderjit Kaur Chima

.....Petitioner

Vs

Maninder Grewal and others

.....Respondents

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

Present: Mr. Satyaveer Singh, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 10.09.2015 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Chandigarh whereby application of the plaintiffs for amendment of plaint was allowed.

[2]. Brief facts as gathered from the record are that the plaintiffs filed a suit for declaration along with consequential relief of issuance of directions in respect of amount to the tune of Rs.3,39,000,00/- and other amount including interest accumulated thereon deposited and lying in any other form whatsoever in the name of Ms. Mahinder Kaur Dhillon (deceased) on the basis of Will dated 26.11.2001 with codocil

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dated 14.06.2005 and Will dated 05.02.2009. Number of reliefs were incorporated in the headnote of the plaint.

[3]. Plaintiffs filed application under Order 6 Rule 17 CPC for amendment of the plaint on the ground that they have got certain documents which were necessary for just and complete adjudication of the controversy. Plaintiffs sought to amend headnote and prayer clause of the plaint.

[4]. Prayer was opposed by the defendants/petitioner on the ground that the proposed amendment would change the nature of suit and contrary relief would come to be incorporated. The proposed amendment was opposed and it was contended that the only remedy available with the plaintiffs was to withdrew the suit and to file fresh after the proposed amendment in accordance with law. The present suit was claimed to be infructuous.

[5]. Vide the impugned order dated 10.09.2015, trial Court accepted the application for amendment of plaint. That is how the present revision petition came to be filed before this Court.

[6]. I have heard learned counsel for the petitioner.

[7]. Apparently, the main suit involves prayer for declaration that the plaintiffs are real and original claimants to receive the

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amount to the tune of Rs.3,39,000,00/- and other amounts including interest accumulated thereon deposited and lying in any form whatsoever, in the name of Ms. Mahinder Kaur Dhillon (deceased), lying on or after 11.06.2009/ opening of her account till the time of her death in Punjab National Bank on the basis of Will and consequent directions to defendant Nos.1 to 3 for delivery of the amounts illegally deposited in the account of the deceased.

[8]. The aforesaid suit for declaration was sought to be amended in order to incorporate that the declaration to the effect that the making of the FDR dated as 05.03.2009 for an amount of Rs.3,25,000,00/- and closing of the account of Ms. Mahinder Kaur Dhillon and delivery of demand draft to defendant No.1 of Rs.3,39,000,00/- by defendant Nos.4 to 6 was illegal. The declaration was to the effect that the act of defendant Nos.2 and 3 in opening of joint account of Ms. Mahinder Kaur Dhillon with defendant No.1 by accepting the demand draft in a sum of Rs.3,39,000,00/- by defendant Nos.4 to 6 was illegal and against the mandatory provisions.

[9]. The aforesaid subsequent events have the material bearing on the rights of the parties. In any case, the proposed amendment is relatable to the original suit and continuity of plea

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in the suit which would be having effect of elaboration of stand of the parties at a subsequent stage. Since the proposed amendment has necessary connectivity with the original claim and all the issues arising therefrom should be decided in the same suit without leaving the parties to adhere to any other proceedings in order to avoid multiplicity of litigation.

[10]. Looking to the original claim of the plaintiffs and the proposed amendment which will further elaborate the stand on the basis of subsequent events and continuity of plea in the suit and elaboration of stand of the parties, in considered opinion of this Court, the proposed amendment was just and proper in order to enable the Court to arrive at just conclusion of the case.

[11]. 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.

[12]. Rule of amendment is essentially a rule of justice,

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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.

[13]. In ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Para Nos.20 and 23 of the aforesaid judgment are being reproduced hereasunder:-

> *"20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a*

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new cause of action in the plaint may be objectionable.

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement."

[14]. Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may be necessary for real determination of issues between the parties. Amendment can be allowed, even after commencement of the trial, if in the opinion of the Court that amendment could not be brought on despite knowledge and due diligence by the party and the party could not have raised the matter before commencement of the trial. The amendment in the written statement has to be liberally construed unless and until serious prejudice or irreparable loss is caused to the opposite side or the amendment is *mala fide*.

[15]. The trial Court has exercised the jurisdiction lawfully

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and in consonance with the settled principles of amendment. No error of jurisdiction can be pointed out in the order passed by the trial Court. Resultantly, this revision petition is found to be devoid of merits and the same is accordingly dismissed.

October 19, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No

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