

Civil Revision No. 7178 of 2015

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7178 of 2015

Date of Decision: 31.5.2016

Bahadar Singh

---Petitioner

versus

Chehal Multipurpose Cooperative Service Society Limited

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. HPS Ghuman, Advocate for the petitioner
Mr. Harnek Singh, Advocate for the respondent**

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

Rekha Mittal, J.

The present petition has been directed against order dated 6.10.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Nabha, dismissing application of the petitioner filed under Order 6 Rule 17 of the Code of Civil Procedure (in short "CPC") for amendment of the written statement.

Counsel for the petitioner has submitted that the petitioner/defendant filed the application to add certain facts in para 4 of the written statement, detailed in para 2 of the application. It is urged that law regarding amendment of written statement is more liberal than that of plaint and amendment of pleadings can be allowed at any stage of the proceedings. It is further submitted that as the facts sought to be incorporated by way of amendment are necessary for decision of real controversy, the trial court has committed a serious error rather illegality in rejecting the application. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India **Usha Devi vs. Rijwan Ahamd and others 2008(1) RCR (Civil) 840, Laxmibai (Dead) through Lrs and another vs. Bhagwantbuva (Dead)through Lrs. and others 2013 (4)SCC97.**

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that the application has been filed at a highly belated stage i.e. after the parties have already adduced their evidence and the case is fixed for rebuttal evidence and arguments. It is argued that the proposed amendment is clearly hit by the proviso appended to Rule 17 of Order 6 CPC.

I have heard counsel for the parties, perused the paper book particularly the impugned order.

There cannot be any quarrel with the settled position in law that amendment of pleadings can be allowed at any stage of the proceedings. The Legislature has added a proviso to Rule 17 of Order 6 CPC in order to avoid litigation being prolonged on account of filing an application for amendment at a belated stage. However, even after addition of proviso to Rule 17, right of a litigant to seek amendment is not absolutely scuttled. Equally true is that in order to seek amendment at a belated stage, there must be justifiable reasons for failure of a party to plead the facts sought to be introduced by way of amendment at an appropriate stage of the proceedings in order to examine as to whether explanation tendered by the applicant for delay is bona fide or otherwise. In the case at hand, the petitioner in para 4 of the application has stated that the above said facts (facts sought to be added and stated in para 2 of the application) were disclosed by the defendant (petitioner) to his counsel but the same could not be brought on record at the time of filing the written statement due to oversight of counsel. Admittedly, the petitioner has already adduced his evidence in order to rebut the evidence led by the plaintiff i.e. Chehal

Multipurpose Cooperative Service Society Limited (in short “the Society”). There is no explanation much less satisfactory that even if counsel for the petitioner has failed to plead certain facts which were disclosed to him before filing the written statement, why the petitioner could not file an application for amendment before adducing his evidence. This apart, if such a plea of a litigant is allowed to prevail, there may not be a case wherein application for amendment can be dismissed. That being so, explanation tendered by the petitioner for his failure to incorporate the facts sought to be added by way of amendment appears to be patently false and sufficient to disentitle him to the relief claimed. In this view of the matter, the petitioner cannot seek any advantage to his contention from the referred authorities decided in the peculiar facts and circumstances of the cases.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed with no order as to costs.

(Rekha Mittal)
Judge

31.5.2016
PARAMJIT