

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7904 of 2014

Date of decision : January 22, 2016

Kuljeet Kaur

..... Petitioner

Versus

Munish Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Divanshu Jain, Advocate
for the respondents.

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

Amit Rawal, J (oral).

The petitioner-defendant is aggrieved of the order dated 15.11.2014 whereby application moved by the respondents-plaintiffs seeking amendment of the plaint to incorporate sub para in paragraph 6 of the plaint has been allowed.

Mr. Raman Mahajan, learned counsel appearing on behalf of the petitioner submits that no doubt the suit bearing No. 188 of 2004 was decided ex-parte vide judgment and decree dated 19.1.2009. However, the said order was set aside and the matter was remanded back to the trial court by giving two opportunities to the defendant to cross examine the witness. The suit was at the stage of cross-examination of the plaintiffs and the aforementioned application under Order 6 Rule 17 CPC for amendment of plaint was

filed.

He further submits that preceding to filing of the suit, no legal notice was sent hence ingredients of Section 16-C of the Specific Relief Act, 1963 (hereinafter called as 'the Act') were also wanting and therefore the amendment could not be permitted. In support of his contentions he has relied upon the judgment in **J. Samuel and others Vs. Gattu Mahesh and others 2012(3) PLR 93 Vol.CLXVII** thus, prays that there is illegality and perversity in the impugned order.

Mr. Divanshu Jain, learned counsel appearing on behalf of the respondents submits that after the remanding order, the respondents-plaintiffs had immediately moved an application under Order 6 Rule 17 CPC and also filed a fresh affidavit containing ingredients of Section 16-C of the Act. The said application was rejected by the trial court which was challenged in this Court vide CR No. 7900 of 2013 and the same was allowed vide order dated 29.9.2013 and directions were issued to decide the application filed under Order 6 Rule 17 CPC first.

He further submits that after passing of the order under challenge, a afresh affidavit containing ingredients of Section 16-C of the Act has been filed and thereafter, in case, the amendment is allowed, he would not lead any fresh evidence and thus, prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

Shorn of the facts noticed above, the law with

regard to the amendment is that while allowing the application for amendment, stage of the suit has to be seen. Since the suit is at the stage of the plaintiffs' evidence, no pre judice would be caused to the defendant in case amendment sought to be incorporated is allowed, rather, it will help the court in adjudication of *lis* between the parties. As per the ratio decidendi culled out in **J. Samuel and others's case (supra)** the Hon'ble Supreme Court had declined the application seeking amendment to incorporate the similar relief on the premise that the suit has reached the stage of pronouncement of the order, thus there is a stark difference between the facts and circumstance of the case referred above and the present case.

Since, after allowing of the application under Order 6 Rule 17 CPC the respondents-plaintiffs have filed a fresh affidavit containing ingredients of Section 16-C of the Act, I am of the view that the amendment sought to be incorporated in paragraph 6 of the plaint is essential and necessary for adjudication of *lis* between the parties.

Keeping in view the aforementioned, facts I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

January 22, 2016
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