

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

CR No. 8906 of 2015

Date of decision :27.04.2016

Jai Singh Dahiya

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.P.Yadav, Advocate
for the petitioner.

Mr. Manoj Dhankhar, AAG, Haryana

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

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 16.12.2015 passed by the learned Additional District Judge, Kaithal in Civil Appeal no. 23/2015, titled as 'Jai Singh Dahiya Vs. State of Haryana and others', whereby the application filed by the petitioner for amendment of the plaint has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner-plaintiff only wants to add the relief to claim the interest on the delayed payments and that will not change the

nature of the suit nor will require any fresh evidence. The interest was very much claimed in the legal notice served upon the respondents. But, due to some inadvertent mistake, the said relief could not be claimed in the plaint.

3. On the other hand, learned counsel for the respondents contended that the application for amendment of the plaint has been moved by the petitioner at the appellate stage. No such plea was raised in the plaint and even no application was moved by the petitioner during the pendency of the suit. Thus, he contended that in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short CPC), the application for amendment cannot be entertained.

4. I have duly considered the aforesaid contentions.

5. The petitioner has filed the suit for declaration and injunction claiming the service benefits i.e. full pay (less the subsistence allowance paid to him during pension period), promotion, timely increment and other service/retiral benefits. The said suit of the plaintiff was decreed by the learned trial Court. Petitioner has preferred the appeal taking the plea that he was harassed for 15 years and was entitled to interest at the rate of 18 % per annum on the delayed payments of the service benefits. The petitioner has moved the application for amendment of the plaint seeking to introduce the relief regarding interest. The said application has been dismissed by the learned First Appellate Court on the plea that the

application has been moved only to cover up the lacuna and no amendment can be allowed after the commencement of the trial.

6. There is no dispute with the proposition of law that the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. To support this view reference can be made to case **Abdul Rehman and Anr. Vs. Mohd. Ruldu and Ors. 2012(4) R.C.R (Civil) 481**. In the instant case, the petitioner has sought the amendment in the plaint only to add the relief with respect to the interest on the delayed payments. Certainly, the said amendment will not change the nature of the suit and will also not require any fresh evidence. Moreover, mere addition of the relief with respect to interest will not itself make the petitioner entitled for interest. It is still the discretion of the learned First Appellate Court to consider the plea on merits as to whether the petitioner-appellant-plaintiff will be legally entitled to interest on delayed payment or not, if, so, at what rate. So, there is no question of any prejudice to the rights of the respondents.

7. No doubt, the petitioner has not moved this application during the pendency of the suit. But, mere delay in filing the application is no ground to decline the prayer. If the amendment is essential to determine the real controversy in the suit, the same can be allowed even at the belated stage.

To support this view reference can be made to case **Surender Kumar Sharma Vs. Makhan Singh 2009(4) R.C.R (Civil) 597**. There is also no dispute with the proposition of law that the procedural law is the handmaid of the justice. The Hon'ble Supreme Court in case **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Ors. 2005(4) R.C.R (Civil) 823** has laid down that all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not be construed in a manner which would leave the Court helpless to meet extraordinary situations in ends of justice, processor law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It was further laid down that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. The similar ratio of law has been laid down by the Hon'ble Apex Court in case **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others 2015(5) R.C.R (Civil) 562**. Thus, the proviso to Order 6 Rule 17 CPC cannot be construed in the manner that amendment of pleadings cannot be allowed in any case after the commencement of the trial.

8. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 16.12.2015 is hereby set aside. The application filed by the petitioner-appellant-plaintiff for amendment of the

plaint is allowed subject to Rs. 10,000/- as costs to be deposited with the District Legal Services Authority, Kaithal.

27.04.2016

S.khan

(DARSHAN SINGH)
JUDGE