IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR 978 of 2016 (O&M)
Date of decision: 30.08.2016

Sheela Aggarwal .... *Petitioner*

Versus

M/s Infocom Digital System Limited and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Aditya Jain, Advocate
for the petitioner

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Rekha Mittal, J.

The present petition directs challenge against order dated 18.11.2015 (Annexure P1) passed by the Additional Civil Judge (Senior Division), Gurgaon whereby application (Annexure P2) filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short, CPC) for amendment of the plaint and also for impleading Syndicate Bank and M/s Guardian Life Care Private Limited as defendants No. 2 and 3, has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed suit No. 2006 of 1996 for specific performance of contract dated 15.01.1996 against M/s Infocom Digital Systems Limited before the Delhi High Court. However, the suit was transferred to the Court of Civil Judge (Senior Division) Gurgaon. The suit reached its fag end when the proceedings were stayed due to liquidation proceedings filed in the Court at Delhi and appointment of a provisional liquidator. Later, permission to proceed with the suit was granted by the Delhi High Court vide order dated 09.02.2011.

The petitioner filed the instant application (Annexure P2) under Order VI Rule 17 and Order 1 Rule 10 read with Section 151 CPC for addition of parties as well as amendment of plaint in order to challenge various orders passed in different proceedings from years 2002 to 2008. After having heard counsel for the petitioner as respondent No. 1 became ex parte vide order dated 17.08.2015, learned trial Court dismissed the application for the reasons assigned in para 6 of the impugned order.

Counsel for the petitioner has submitted that as the suit was filed by the petitioner in the year 1996 and proviso to Rule 17 Order VI CPC was added by amending Act, 2002, the aforesaid proviso cannot be attracted in the circumstances of the present case. For this purpose, he has relied upon judgment of this Court ***Gurmail Singh alias Kaka Singh v Ran Singh and others 2012 (3) CCC 325.***

Another submission made by counsel is that amendment of pleadings can be allowed at any stage of the proceedings if the applicant satisfies two conditions namely, (a) not working injustice to the other side; and (b) being necessary for the purpose of determining the real questions in controversy between the parties. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court ***North Eastern Railway Administration, Gorakhpur v. Bhagwan Dass (dead) by LRs (2008) 8 Supreme Court Cases 511***. In addition, it is submitted that all the proceedings before the Debt Recovery Tribunal that culminated in various orders sought to be challenged, by way of amendment were held during pendency of the suit, therefore, Syndicate Bank and M/s Guardian Life Care Private Limited should be allowed to be impleaded as a party under principle of *lis pendence.*

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

Before adverting to the submissions made by counsel for the petitioner, it is pertinent to note that the petitioner filed a joint application for impleadment of parties and amendment of the plaint. The maintainability of such a joint application came up for consideration before this Court in ***Nirmal Singh and others v Tarsem Singh and others (CR 3791 of 2013, decided on 01.05.2014***. A relevant extract from the aforesaid judgment reads as follows:-

> When we examine such an issue as the one involving a clubbed application of the kind presented in this case, then by clubbing reliefs by intermingling facts necessary for the reliefs and causes of action and the pleadings, it is manifest that such a party is trying to steal a march by what appears either oblique motive or an engineering feat in delaying tactics thereby giving rise to a judicial dilemma not worth foisting on the already belaboured trial Judge. In the very nature of things the application under Order 1 Rule 10 CPC would have to be decided first to determine who should be added as parties in an ongoing suit. Once that is decided and if such parties are introduced each one of them would have a right to file their defence by presentation of a written statement admitting or denying the facts on which the plaintiff relies upon to obtain a decree. All such newly added parties would have a right to do many things including filing or presenting set offs and counter claims, applications under Order 7 Rule 10 & 11 CPC, raising issues of limitations, seeking recall of witnesses examined by the plaintiff in their absence to face cross-

> examination, demanding reframing of issues, relying on burden and onus, and godknows - what, and other lurking steps in the proceedings not known or imagined even to a trained legal mind. Then, if the proposed amendments are allowed then each of the newly added defendants would have a right to traverse the averments made in the original plaint plus counter and rebut the amendments as may be allowed by the court in the plaint by putting in written statements leading to recasting or adding new issues the necessity of which may arise and cannot be stopped when justice demands."

In the case at hand, the petitioner has filed a joint application for impleading of additional defendants and amendment of the plaint and the same appears to have been filed with an oblique motive and to create confusion. Counsel for the petitioner has not advanced any arguments as to how impleading of Syndicate Bank or/and M/s Guardian Life Care Private Limited is either proper much less necessary for complete and effective adjudication of the controversy involved in the suit originally filed by the petitioner. Not only this, even a copy of the plaint has not been placed on record for perusal and appreciation as to whether impleadment of Syndicate Bank and M/s Guardian Life Care Private Limited is covered within the ambit and purview of Order 1 Rule 10(2) CPC. If the Syndicate Bank and M/s Guardian Life Care Private Limited cannot be impleaded as a party in the suit originally filed, plea of the petitioner to amend the plaint in order to challenge the proceedings conducted by the Debt Recovery Tribunal or certain orders passed in those proceedings is otherwise not tenable as those issues cannot be raised in absence of the aforesaid entities.

In para 16.3 of the instant application, the petitioner has tried to make out a case for impleadment of Syndicate Bank being a necessary party. A reading of the said para makes it manifest that there is not even a whisper as to how the original suit cannot be decided completely and effectively without impleading Syndicate Bank as a party. In this view of the matter, it can be safely held that a joint application has been filed by the petitioner with a mala fide intent and ulterior motive by seeking two reliefs in a joint application.

The learned trial Court in para 6 has observed that the applicant wants to incorporate a relief of mense profits; declaration to the effect that alleged mortgage of suit property by defendant No. 1 with defendant No. 2 is null and void; another declaration that decree/order dated 07.01.2002 of DRT-I, in OA 210 of 1997, order dated 29.08.2007 of recovery officer in RC 146 of 2002, order dated 04.09.2008 passed in Appeal No. 34/2007 by DRT-I and order passed in Appeal No. 210 of 2008 by Debt Recovery Appellate Tribunal and all other orders passed thereto including orders of attachment, sale proclamations, etc. are null and void. It has further been held that all amendments of the pleadings should be allowed which are necessary for determination of the real controversy in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original was raised or defence taken. In the case in hand, the proposed amendments will certainly change the nature and character of the suit about which there was no whisper in the pleadings as it originally stood and will raise fresh issues triable by evidence and same being impermissible and should not be allowed. The plaintiff is going to challenge orders which were passed way back in the years 2002, 2007 and 2008 which are otherwise barred by limitation. The Court relied upon judgment of Hon'ble the Supreme Court ***B.K Naryana Pillai v. Parmeswaran Pillai, AIR 2000 Supreme Court 614*** in support of its findings that for making out a case for which there is not the slightest basis in the pleadings as it originally stood thus resulting in fundamental alteration of the pleadings of which the lis will assume a complexion wholly beyond the compass of the original cause of action will fall beyond the scope of amendment.

To be fair, counsel for the petitioner has made a vain attempt to argue that as the suit was adjourned sine die vide order dated 09.02.2005 and was revived under orders of the Delhi High Court dated 09.02.2011, there was no occasion for the petitioner to file an application for amendment of the plaint at an earlier occasion when the orders sought to be challenged by way of amendment came into existence.

Counsel for the petitioner has failed to cite any rule or precedent to support his plea that merely because the proceedings in a case have been adjourned sine die, it debars a party from filing an appropriate application even though the said application may not be decided by the Court till revival of the suit. He has not made any submissions to assail the findings recorded in para 6 of the impugned order holding that allowing the application would result in fundamental alternation of the pleadings and the lis will assume a complexion wholly beyond the compass of original cause of action, thus, being beyond the scope of amendment. Similarly, no submission has been made by counsel as to how the petitioner can cross hurdle of limitation seeking challenge to the orders passed way back in the years 2002, 2007 and 2008 by filing an application in the year 2015.

Counsel for the petitioner has referred to judgment of this Court in *Gurmail Singh alias Kaka Singh,s* case (supra) by contending that proviso to Rule 17 Order VI CPC cannot be made applicable in the suit that was instituted in the year 1996. Perusal of the order impugned would indicate that the trial Court has not dismissed the application by invoking the said proviso, therefore, the petitioner cannot derive any advantage to his contention from the judgment *Gurmail Singh alias Kaka Singh* (supra).

Though there is no dispute about the settled position in law laid down in North Eastern Railway's case (supra) with regard to amendment of pleadings but in view of peculiar facts and circumstances discussed hereinbefore, the petitioner cannot derive any advantage to his contention from the referred authority for seeking indulgence of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

30.08.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No