

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

C.R. No. 1422 of 2017

Date of Decision:- 28.02.2017

Prem Printing Press

....Petitioner

vs.

Shashi Kumar

....Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.S. Dhillon, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 17.08.2016 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal, Amritsar in case Reference No. R-150-2015 titled as **Shashi Kumar vs. Prem Printing Press** whereby application filed by the petitioner for amendment of written statement has been dismissed.

Briefly the facts of the case are that respondent filed the statement of claim in an industrial dispute which was referred to Industrial Tribunal, Amritsar alleging therein that he was working as Machine-man with the petitioner-Management from 01.03.2014 to 25.03.2015. Petitioner-management filed written statement to the claim petition and denied the averments made therein as also the relationship of employer and employee

between the parties. It was also stated that neither the workman-respondent worked with the management nor appointed and the question of paying any salary does not arise at all. During pendency of the case, the petitioner-management filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of written statement which was dismissed vide order dated 17.08.2016 which is the subject-matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that amendment was necessary for just decision of the case and by taking a technical ground, the application has been dismissed, whereas, no prejudice is going to be caused to the other side. Learned counsel also submits that petitioner has already taken specific plea in the written statement that there is no relationship of employer and employee. Amendment sought was only formal and was for clarification of the facts only. There was neither any inconsistency in the amendment nor separate facts were mentioned in the written statement. Learned counsel submits that learned Tribunal has failed to see as to whether the amendment sought in the written statement is necessary, in the interest of justice, or for proper adjudication of the matter in dispute. At the end, learned counsel for the petitioner submits that the learned Tribunal has given his opinion on the merits of the case which can prejudice the interest of the petitioner as it is an expression of opinion on merits of the case.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order dated 17.8.2016 (Annexure P-4).

The facts relating to filing of claim petition, raising of

industrial dispute by the respondent and filing of written statement by the petitioner are not disputed. Even filing of reply to the application and stand taken therein are not disputed.

During pendency of the claim petition, petitioner filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of written statement. As per amendment, petitioner wanted to delete para no. 3 of the written statement filed by it. On perusal of written statement filed by the petitioner, it is clear that the workman had worked only for a period of five months which is less than 240 days in a calendar year, meaning thereby, working for a period of five months has been admitted by the Management, whereas, as per stand of the petitioner, the relationship between the employer and employee has been denied. Not only the deletion of para no. 3 is going to prejudice the rights of the respondent-workman but the stand taken in the written statement is also going to be changed.

The amendment of the pleadings can be allowed by the Court on being satisfied that the same is necessary for just decision of the case or would be helpful in reaching to the just conclusion and in resolving the controversy in hand. It is also to be seen whether any prejudice is going to be caused to the other party or not. The object of amendment is to minimise the litigation. No doubt, the pleadings can be amended at any stage of the proceedings when it is formal in nature and is necessary for the purpose of determining the real question in controversy between the parties. As per proviso to Rule 17 CPC amendment can be disallowed in case the Court comes to the conclusion that in spite of due diligence, the

party could not have raised the matter before the commencement of the trial.

The factors which are to be taken into consideration while dealing with the application for amendment are as under:-

- “(1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation'
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

By considering the factors mentioned above and on perusal of contents of application as well as impugned order, it appears that no ground is made out to amend the written statement, therefore, the impugned

order does not require any interference by this Court. A well reasoned and speaking order has been passed by the Tribunal while dismissing the application of the petitioner-management and, as such, the revision petition is dismissed. However, it is made clear that any expression while passing impugned order shall not be construed as an opinion on the merits of the case during trial.

February 28, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes