

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

CR No.1437 of 2017 (O&M).

Date of Decision: 01.03.2017.

Sarabjit Singh Shergil

....Petitioner.

VERSUS

Narinder Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Puran Chand Arora, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the order dated 04.10.2016 passed by learned Civil Judge (Junior Division), Patiala allowing the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short, “CPC”) of the respondent-defendant for amendment in the written statement, the instant revision petition has been filed by the petitioner-plaintiff.

The submissions made by Mr. Puran Chand Arora, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that a suit for recovery of Rs.1,25,000/- has been filed by the petitioner-plaintiff against the respondent-defendant. In his written statement, the respondent-defendant pleaded that an amount of Rs.75,000/- was transferred by the petitioner-plaintiff in his account as his wife had purchased numerous electronic goods from him on credit basis during the year 2009. On the rival

petitioner produced his evidence and concluded the same. When the case was at the stage of respondent-defendant's evidence, he filed the instant application for amendment in the written statement so as to incorporate in the pleadings two documents i.e. a letter alleged to be written by the plaintiff and a retail invoice dated 04.03.2008. Since the documents were in his possession, it could not be his case that the documents were not in his knowledge and could not be produced or pleaded about earlier in the written statement despite due diligence. The petitioner has already closed his evidence and will have no opportunity to rebut the documents.

The arguments of learned counsel for the petitioner are devoid of merit. The Hon'ble Supreme Court in **Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, 2010(1) RCR (Civil) 27**, has culled out certain factors to be taken into consideration while dealing with the application for amendment of pleadings which are as under:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (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.*

68. *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.”*

In **Abdul Rehman and another vs. Mohd. Ruldu and others,**

2012(4) RCR (Civil) 481, the Court has held, in para 8 as follows:-

“8. *The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that*

come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case.”

From the factors culled out in **Revajeetu Builders and Developers'** case (supra) and the observations made in **Abdul Rehman and another's** case (supra), it becomes a settled proposition of law that the amendment, which is necessary for determining the actual controversy between the parties and does not cause any prejudice to the other side, who can be compensated adequately in terms of money, can be allowed at the instance of any of the parties.

In the case in hand, the respondent-defendant had already taken a plea in his written statement that in the year 2008-2009 he was running electronic goods business at Amritsar and that the petitioner-plaintiff had transferred the amount of Rs.75,000/- in his account as his wife had purchased numerous electronic goods from his shop in the year 2009. The amendment sought by respondent-defendant is only of explanatory nature of the pleading already raised by him. He intended to incorporate the details of

written statement. The amendment neither changed the nature of the defence set up by him nor has introduced any new fact.

The amendment would certainly cause no prejudice to the case of the petitioner-plaintiff as he would get opportunity to rebut pleadings as well as the documents sought to be produced by the respondent-defendant.

Thus, there being no merit in the petition, it is hereby dismissed.

Since the main petition itself has been dismissed, the application for condonation of delay also stands dismissed.

(SNEH PRASHAR)
JUDGE

01.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**