

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.1932 of 2016 (O&M)

Date of Decision:09.02.2017

Balbir Kaur

.....Petitioner

Versus

Sarabjit Kaur

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Jaideep Verma, Advocate, for the petitioner.

None for the respondent.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned order dated 05.12.2015 (Annexure P-4), whereby application for amendment of the plaint filed under Order 6 Rule 17 of the Code of Civil Procedure (for short the "CPC") was declined, the plaintiff has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued vide order dated 15.03.2016.

As per office report dated 10.05.2016, notice issued to the respondent has been received back duly served. Thereafter, the case has been adjourned 3-4 times. Nobody has put in appearance on behalf of the respondent. After waiting for sufficient time, case was called twice. However, neither anybody has come present to oppose the present revision petition on behalf of the respondent nor any request for pass over has been made.

Heard learned counsel for the petitioner.

The bare perusal of the impugned order shows that the case was

at the initial stage and issues were yet to be framed. After filing of the suit, some material developments had taken place necessitating filing of the application under Order 6 Rule 17 CPC by the plaintiff-petitioner. However, the learned trial Court while passing the impugned order failed to appreciate true facts of the case as well as provisions of law contained in Order 6 Rule 17 CPC. The petitioner, being the plaintiff herself, was not going to gain anything in delaying the matter. The only endeavour on the part of the petitioner seems to bring on record all the relevant facts, including the developments which had taken place after filing of the suit, so as to facilitate the learned trial Court to arrive at a just conclusion for doing complete and substantial justice between the parties. Having said that, this Court feels no hesitation to conclude that the learned trial Court failed to exercise its jurisdiction, while passing the impugned order which has caused manifest injustice to the petitioner-plaintiff.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. No party to the litigation should be forced to go home with the grievance that it was not granted due opportunity to put its best case before the Court. Of course, the stage of litigation is one of the relevant factors for allowing the application for amendment in the pleadings. As noticed here-in-above, the suit of the plaintiff-petitioner was at the very initial stage because even the issues had not been framed when the impugned order was passed. Since, the learned trial Court could not appreciate true facts of the case in the correct perspective, while passing the impugned order, the same cannot be upheld.

It is also pertinent to note here that by allowing the amendment sought, neither the nature of the suit was going to be changed, nor any kind

of prejudice was going to be caused to the defendant, because evidence of the plaintiff herself was yet to start. Under these undisputed facts and circumstances of the case obtaining on the record, it can be safely concluded that the application moved by the petitioner seeking amendment in the plaint ought to have been allowed by the learned trial Court. Since, the impugned order has been found to be suffering from patent illegality, the same cannot be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the learned trial Court has erred in law, while passing the impugned order, the same cannot be sustained. The present revision petition deserves to be accepted and the same is hereby allowed. The impugned order is set aside. The application moved by the plaintiff-petitioner under Order 6 Rule 17 CPC seeking amendment in the plaint would stand allowed.

Consequently, the learned trial Court is directed to permit the petitioner-plaintiff to file her amended plaint. Both the parties shall be granted due opportunity and the learned trial Court shall decide the case expeditiously, however, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

February 09, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes