

CR No.1683 of 2017

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

Sr. No.120

CR No.1683 of 2017

DECIDED ON: March 08, 2017

PHOOL WATI AND OTHERS

..PETITIONERS

VERSUS

M/S FRIENDS MECHANICAL WORKS (INDIA)

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek Chauhan, Advocate,
for the petitioners.

JASPAL SINGH, J.

Challenge in this revision petition is to the order dated January 30, 2017 (Annexure P-8) passed by the learned Civil Judge (Jr. Divn.) Ludhiana, vide which an application filed by the petitioners/defendants under Order VI Rule 17 for amendment of written statement as well as counter claim has been dismissed.

2. By way of proposed amendment, petitioners/defendants intend to incorporate in the written statement as well as counter claim that a sum of ₹11,43,558/- which is subject matter of the debit note dated March 12, 2002 was not paid by the plaintiff to the petitioners/defendants as well as in various paragraphs of the written statement and counter claim, wherever the same are required. The said proposed amendment has been declined by the

learned trial court mainly on the ground that claim put forth by the petitioners/defendants is now barred by limitation. Further while dismissing the application, the court has observed that debit note was available much prior to the filing of the suit and was already in their knowledge. In the exercise of due diligence, they should have taken the plea at the time of filing the written statement as well as counter claim or at any time before the commencement of the trial. But the impugned order dated January 30, 2017, whereby the trial court has dismissed an application for amendment of written statement as well as counter claim is absolutely illegal, arbitrary against the settled principles of law and natural justice. In fact, the amendment sought by the petitioners/defendants is based upon the documents which are already in existence and result of business transaction between the parties. As such, the same cannot be said to be an afterthought on the part of the petitioners/defendants. Even otherwise, no prejudice can be said to have been caused to the respondent-plaintiff, in case, the amendment is allowed.

3. The learned trial court has also failed to appreciate while passing the impugned order that the amendment sought by the petitioners/defendants in the written statement and counter claim revolve and based only on the document which can be proved by way of entries made/reflected in the records and returns filed by them. Similarly, observation made by the learned trial court in the impugned order that amendment sought is mala fide or that it would materially change the nature of the suit is also without any basis. Rather, the amendment sought would bring into picture the document, which is already in existence and result of

business transactions between the parties. It also cannot be said that the amendment sought is beyond limitation. Rather, it would relate back to the date of filing the written statement and counter claim. Accordingly, learned counsel for the petitioners submitted that impugned order being unsustainable in the eyes of law is liable to be set aside by way of acceptance of instant petition. Consequently, an application filed by the petitioners under Order VI Rule 17 read with Section 151 CPC for the amendment of written statement and counter claim deserves to be allowed.

4. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioners and have perused the record available on file. Undoubtedly, by way of the proposed amendment, the petitioners intend to allege debit note dated March 12, 2002 for a sum of ₹11,43,558/- in the written statement as well as counter claim submitting that the aforesaid amount was not paid by the plaintiff to the petitioners/defendants. Certainly, the fresh suit for recovery by the petitioners/defendants on the basis of the aforesaid debit note dated March 12, 2002 against the plaintiff would be barred by limitation and on this ground, the learned trial court has rightly declined the amendment sought by the petitioners/defendants. Similarly, it also can be said without any hesitation that the debit note was in existence much prior to the filing of the written statement as well as counter claim. Similarly, it also cannot be said that the petitioners/defendants were not aware of the same at the time of filing written statement. Thus, it has been rightly observed by the learned trial court that in exercise of due diligence, petitioners/defendants should have taken this plea at the time of filing of the written statement and counter

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claim or at any time before the commencement of the trial.

5. Similarly, the introduction of the amendment sought by the petitioners/defendants would certainly bring a substantial change in the nature of the defence taken by the petitioners/defendants as applicants have set up a new claim which is barred by limitation. In case, the amendment is allowed, it would be highly prejudicial to the right and interest of the respondent/plaintiff. Moreover, such an application for amendment of written statement and counter claim was moved by the petitioners/defendants when the case was listed for their evidence. They had already availed 13 effective opportunities to conclude their evidence which clearly depicts the mala-fide intention on the part of the petitioners/defendants to delay the disposal of the suit. In fact, during the course of arguments, learned counsel for the petitioners could not point out any infirmity, illegality or perversity in the impugned order. This court has also scrutinized the impugned order and finds the same to be absolutely in consonance with the settled proposition of law. The instant petition being devoid of merit is liable to be dismissed and the order is made accordingly, whereby the impugned order dated January 30, 2017 (Annexure P-8) is upheld.

6. No order as to costs.

March 08, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**