

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

C.R. No.1873 of 2017

Date of Decision: 16.03.2017

Gurpal Singh

....Petitioner

Versus

Kamaljit Kaur and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Onkar Rai, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

This revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 28.02.2017 passed by the Civil Judge (Junior Division), Phillaur, Jalandhar, whereby, the application filed under Order 6 Rule 17 CPC for amendment of plaint has been dismissed.

Briefly, the facts of the case are that the petitioner, through his brother, namely, Sh. Harbans Singh, had purchased the land measuring 3 kanals 10 marlas 6.5 sarsai, out of total property along with all rights having Electric Motor Connection in the land, in dispute. Defendant/respondents threatened the petitioner to disconnect, transfer, shift or to sell out the tubewell connection or to create hindrance in use of tubewell connection. The petitioner filed a suit for permanent injunction restraining the defendants from transferring, shifting and disconnecting the Electric Tubewell/Submersible Motor Connection bearing No.APR 102 of 7.5 HP

and also for restraining the defendants from interfering into peaceful enjoyment and usage of the plaintiff.

Written statement to the suit was filed and thereafter, replication to the written statement was also filed. However, during pendency of the suit, the application was moved for correction of Tubewell/Submersible Motor Connection number as due to typographical mistake, it was mentioned as 'APR-102' in stead of "R-174 AP". Said application was dismissed by the trial Court vide order dated 28.02.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that it was only a typographical mistake and the same is a matter of record. Learned counsel also submits that the amendment regarding number is necessary for determining the real controversy between the parties. Neither the nature of suit is going to be changed nor any prejudice is going to be caused to the other party.

Learned counsel for the petitioner has also relied upon judgment of this Court in case **C.R. No.7375 of 2012** titled as **Punjab National Bank vs Shri Chajju Ram and another**, decided on **10.12.2012**.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Facts relating to filing of suit; filing of written statement/replication as well as filing of application for amendment/correction of tubewell connection number are not disputed.

The application for amendment of the pleadings has been dismissed only on the ground of commencement of trial. It is only a

clerical/typographical mistake as correct number of tubewell has not been mentioned which is necessary for determining the controversy, in hand. It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that typographical and clerical mistake can be corrected by the Court even after passing of judgment and decree. It can be corrected even during pendency of the appeal. The stage of the proceedings is not relevant. The power to allow the amendment is wide and can be exercised at any stage of the proceedings, if the same is required in the interest of justice. The purpose of allowing amendment is to minimise the litigation and also to determine the real controversy between the parties. While passing the impugned order, no reason, whatsoever, has been mentioned as to how the amendment is not necessary or how the other party is going to be prejudiced.

Even as per provisions of C.P.C under Sections 151, 152 and 153, clerical and typographical mistakes and errors in judgment and decree can be corrected by Court at any time either of its own motion or on the application moved by any of the party. This view was taken in case ***Rajesh Kumar Aggarwal and others vs K.K. Modi and others 2006(2) RCR (Civil) 577.***

Order VI Rule 17 of the Code enables the parties to make amendment of the plaint which reads as under;

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy

between the parties:

Provided that no application for amendment shall be 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.”

In **Rajkumar Gurawara (Dead) Through L.Rs vs. S.K. Sarwagi & Company Private Limited & Anr.** (2008) 14 SCC 364, Hon'ble the Apex Court has considered the scope of amendment of pleadings before or after the commencement of the trial. In paragraph 18, it has been held as under:-

“.....It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.....”

In **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LR.** (2008) 8 SCC 511, Hon'ble the Apex Court has held as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. Postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors.* which still holds the field, it was held that all amendments ought to be

allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

Similarly, Hon'ble the Apex Court in the case of **Revajeetu Builders & Developers Vs. Narayanaswamy and sons and others** 2010 (1) RCR (Civil) 27 has considered the scope of amendment of pleadings in para No. 63 by concluding as follows:-

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing 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. 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 view of facts and law position as explained above, there is
force in the argument raised by learned counsel for the petitioner.
Accordingly, the present petition is allowed and the impugned order dated
28.02.2017 passed by Civil Judge (Junior Division), Phillaur, Jalandhar is
set aside. The trial Court is directed to allow the petitioner to amend the
pleadings as prayed for in the application moved by him subject to payment
of ₹ 5,000/- as costs to be paid to the party opposite by way of demand
draft.

(DAYA CHAUDHARY)
JUDGE

16.03.2017

gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes