

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

CR No.2079 of 2017.

Date of Decision: 23.03.2017.

M/s Dynamic Continental Pvt. Ltd.

....Petitioner.

VERSUS

Arvinder Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate for the petitioner.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the respondents-caveator.

SNEH PRASHAR, J.

Aggrieved of the order dated 13.01.2017 passed by learned Civil Judge (Junior Division), Ludhiana by virtue of which two applications invoking the provisions of Order VI Rule 17 of the Code of Civil Procedure (for short, 'the Code') filed by the petitioner, one dated 16.07.2015 and the other dated 23.11.2015 were dismissed, the petitioner has preferred the instant petition under Article 227 of the Constitution of India.

The submissions made by Mr. Sunil Chadha, learned Senior counsel representing the petitioner and Mr. D.S. Patwalia, learned Senior counsel representing the respondents have been heard.

Learned Senior counsel for the petitioner submitted two fold

application dated 16.07.2015 filed by the petitioner under Order VI Rule 17 of the Code seeking change of name of the plaintiff company is erroneous and unsustainable; and the second that the other application dated 23.11.2015 of the petitioner also filed under Order VI Rule 17 of the Code was not actually dealt with by learned trial court as not a word was spelt out to record a finding or assign a reason for dismissal of the same.

Elaborating his arguments, learned Senior counsel contended that the application dated 16.07.2015 was filed only for change of name of the plaintiff company from Dynamic Continental Pvt. Ltd. to Curo India Pvt. Ltd. His said prayer had been declined by learned trial court for the mere reason that while name of the company had been changed w.e.f. 29.12.2010, no reason had been explained for not approaching the Court expeditiously as the application had been filed after a lapse of almost five years. Learned Senior counsel urged that mere delay in filing the application was no ground to decline the prayer. If the amendment is essential to determine the real controversy in the suit, the same can be allowed even at a belated stage. The case of the petitioner is at a better footing. Although issues on rival contentions of the parties had been framed by learned trial court but so far no evidence has been led by either of the parties. Change of name of the plaintiff company will neither alter the main structure of the suit nor will affect the defence set up by the defendants-respondents. To fortify his arguments, learned Senior counsel relied upon **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (D) & Ors., 2007(3) R.C.R. (Civil) 866** and **Shaikh Salim Haji Abdul Khaymsab vs. Kumar, 2005(4) R.C.R. (Civil) 823.**

As regards the second application, learned Senior counsel asserted that the petitioner had sought amendment in the plaint to seek a declaratory relief to the extent of declaring the termination of agreement to sell by way of notices given by the defendants-respondents as illegal, null and void, only in view of the judgment rendered by Hon'ble Supreme Court in **I.S. Sikandar (D) By Lrs. vs. K. Subramani and others, 2014(1) R.C.R. (Civil) 236**, but without considering the facts pleaded learned trial Court dismissed that application also.

On the other hand, learned Senior counsel for the respondents argued with vehemence that apart from an unexplained long delay of four and half years in filing the application for changing the name of the plaintiff company, it is also apparent that the address etcetera of the company is also sought to be changed. Such, change in the name and Constitution of the company means that interest of new persons is being involved with an intention to change the entire nature of the suit and grab the property of the defendants-respondents. To support his argument that an amendment, which changes the very basis of the suit, cannot relate back to the date of filing of the suit to cure the defect of limitation and that by amendment, a valuable right that has accrued to the other side cannot be defeated, learned Senior counsel relied upon **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.)vs. Ramesh Chander and others, 2011(3) R.C.R. (Civil) 620** and **K. Raheja Constructions Ltd. vs. Alliance Ministries, 1995(3) R.R.R. 425**.

There does not appear to be much force in the arguments of learned Senior counsel for the defendants-respondents. The change in the name of the petitioner company had taken place w.e.f. 29.12.2010 whereas

the suit was filed on 15.04.2009. In other words, the change of name during pendency of the suit will have no bearing on the issue of limitation, if any, in the case. Moreso, no amendment in the pleadings is being sought by the petitioner as a consequence of amendment in the change of name of the plaintiff company. It is also not the case that consequent to change of name the plaintiff company stood dissolved or a new company has come into existence. The entity of the company is not effected by the change of name. Moreso, the change of name of the plaintiff company would not change the basic structure of the suit and would also not adversely affect the defence set up by the defendants-respondents because the rights of the parties on the date the suit was filed would be the vital issue. At the same time, the amendment in the title of the suit to incorporate the change in the name of the plaintiff company is essential for proper and complete adjudication of the case.

Indeed, the application filed for amendment in the name of the plaintiff company suffers from delay of more than four and half years and that is mainly the ground on which learned trial Court dismissed the application. However, in the impugned order, the reason which had made the case pending for the last more than five years is not mentioned. If at all, it was pending because of unnecessary adjournments being sought by counsel for the parties, I am afraid, the delay in trial on that account cannot be solely attributed to the parties or their counsels as it is for the Court to check grant of unnecessary adjournments and curb the tendency of the parties to delay the trial.

In any case, as submitted by counsel for the parties, the issues in this case were framed on 12.03.2014 but till date, the petitioner-plaintiff

is yet to open his account of evidence which means that the case is still at the initial stage. Otherwise also, it is a settled proposition of law that an amendment essential for determining the real controversy in the suit can be allowed even at the belated stage. In **Shaikh Salim Haji Abdul Khaymsab's** case (supra), Hon'ble Supreme Court has laid down that all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not be construed in a manner which would leave the Court helpless to meet extraordinary situations in ends of justice, processor law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It was further laid down that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Similar is the ratio of law laid down by the Hon'ble Apex Court in case **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others 2015(5) R.C.R (Civil) 562.**

In the above premise, the application filed by the petitioner-plaintiff for change of name of the plaintiff company, which will not change or affect the basic nature of the suit, deserves to be allowed and the impugned order passed by learned trial Court as regards the application filed on 16.07.2015 is set aside.

As far as the second application dated 23.11.2015 filed by the petitioner for amendment in the pleadings in view of the law laid down by Hon'ble Supreme Court in **I.S. Sikandar's** case (supra) is concerned, as pointed out by learned Senior counsel for the petitioner, the said application had not been specifically dealt with by learned trial Court. No finding was recorded to dismiss the said application. Accordingly, the impugned order

qua the said application passed by learned trial Court is also set aside with a direction to learned trial Court to pass a fresh order as per law considering submissions of counsel for both the parties on the application.

The revision petition stands disposed of.

(SNEH PRASHAR)
JUDGE

23.03.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**