

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

CR No.3217 of 2017.

Date of Decision: 05.05.2017.

Om Parkash

....Petitioner.

VERSUS

Hari Om and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amit Jain, Advocate for the petitioner.

SNEH PRASHAR, J.

Challenge in this petition is to the order dated 24.04.2017 passed by learned Civil Judge (Junior Division), Gurugram by virtue of which the application filed by the petitioner-plaintiff under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short, 'the Code') was dismissed.

The submissions made by Mr. Amit Jain, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submits that at the time of preparation of the final arguments and reassessment of the case, it was found that certain facts, which go to the root of the case, had inadvertently been omitted in the pleadings. The amendment sought is only of explanatory nature and will not change the nature of the suit. The date of death of Deepu and the facts relating to inheritance by way of survivorship of the property left by Deepu are material and necessary for proper and complete

adjudication of the case which are to be incorporated in the pleadings by

way of amendment. The application for amendment filed by the petitioner had been dismissed by learned trial court without assigning any justifiable reason. Submitting that the Courts have ample power to allow amendment of plaint, learned counsel relies upon ***State of Madhya Pradesh vs. Union of India and another, (2011) 12 Supreme Court Cases 268.***

There appears no merit in the arguments of learned counsel for the petitioner. With a view to put an end to the practice of filing application for amendment of pleadings belatedly, a proviso was added to Order VI Rule 17 of the Code 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.”

The proviso to Order VI Rule 17 of the Code is in a mandatory form. The jurisdiction of the Court to allow an application for amendment after the trial had commenced had been taken away unless the conditions precedent thereof are satisfied viz the Court must come to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

The trial commences when the Court applies its judicial mind to the rival contentions of the parties, determines the contentious issues between them and calls them to adduce evidence in support of the same.

It has been held by Apex Court in **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** that amendment in pleadings cannot be allowed after the trial had commenced.

In **Salem Advocate Bar Association, T.N. vs. Union of India, (2005) 6 SCC 344 and 365** Hon'ble Supreme Court has held that the object of proviso to Order VI Rule 17 of the Code is to prevent frivolous applications which have been filed to delay the trial.

In the case in hand, it is not just after commencement of the trial but at the fag end when the suit had come up for rebuttal evidence and submission of arguments by the parties for disposal of the case that the instant application for amendment had been filed by the petitioners. No reason has been explained for such long delay in filing the application.

Copy of the application filed by the petitioner for amendment in the plaint has been annexed with the present petition as Annexure-P2. By way of amendment, the petitioner wants to incorporate the date of death of Deepu. His effort is also to add Para No.1A, 7A and 10B in order to plead entirely new facts which would lead to a de-novo trial, whereas the case is already mature for disposal.

It is not the case of the petitioner that the date of death of Deepu or facts relating to inheritance of the property left by him, which he now wants to incorporate in the pleadings, were not in his knowledge at the time of filing the suit. Therefore, it is not the case that the petitioner could not plead the facts earlier despite exercise of due diligence. The fact is that by way of proposed amendment, the petitioner intends to set up a new case

The application for amendment filed by the petitioner was rightly dismissed and there being no merit in the revision petition calling for intervention, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

05.05.2017.
jitender sharma

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