

CR No. 4130 of 2015 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 4130 of 2015 (O&M)

Date of decision: 4.7.2017

Nirmal Singh (since deceased) through LRs.

...Petitioners

Versus

Tarsem Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Jai Bhagwan, Advocate
for contesting respondent Nos. 1 to 4.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 20.4.2015 (Annexure P-5) passed by the learned trial court, whereby application seeking amendment in the written statement was declined, defendants-petitioners have approached this Court by way of present revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and interim order was passed.

Heard learned counsel for the parties.

A bare perusal of the impugned order passed by the learned trial court would show that it were the plaintiffs who sought repeated amendments in their plant. Their two applications under Order 6 Rule 17 of the Code of Civil Procedure ('CPC' for short) were allowed by the learned trial court, by passing different orders. Thereafter, many adjournments were granted by the learned trial court for deciding the stay application. However, when the application

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came to be moved by the defendants seeking amendment in their written statement, the same was declined by the learned trial court by passing the impugned order, observing that both the parties were habitual of moving one after the other application to delay the proceedings. A patently illegal and unwarranted observation has been made by the learned trial court in the operative part of the impugned order to the effect that 'subsequent events can be brought to the notice of the court at the time of final arguments without there being any need to incorporate them in the pleadings, at this stage.'

The abovesaid observation would show that the learned trial court neither found the amendment sought by the petitioner irrelevant nor unjustified but pointed out that subsequent events shall be brought to the notice of the court at the time of final arguments. The learned trial court has misdirected itself, while making the abovesaid observation, thereby altogether ignoring the fact that none of the parties is permitted to travel beyond the pleadings. Having said that, this Court feels no hesitation to conclude that the learned trial court committed a serious error of law, while passing the impugned order and the same cannot be sustained.

It is true that no party should be permitted to delay the proceedings. However, it is equally true that as and when any amendment is found to be necessary, the same should not be denied by the learned court of competent jurisdiction, on the basis of technicalities alone. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted to it to put up its best case. In fact, both the parties must be granted reasonable opportunity to put up their best case before the court which will also facilitate the learned court to arrive at a judicious conclusion.

As noticed hereinabove, the learned trial court was not justified in

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declining the prayer for amendment in the written statement, particularly when repeated amendments had been allowed in the plaint. In such a situation, petitioners cannot be said to be at fault. Further, no prejudice is likely to be caused to the plaintiffs-respondents by allowing the amendment in the written statement.

Learned counsel for the respondents have pointed out that defendants have already taken almost all the pleas in their written statement already filed. Be that as it may, application for amendment moved by defendants-petitioners deserves to be allowed.

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 impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, impugned order dated 20.4.2015 (Annexure P-5) passed by the learned trial court is hereby set aside.

Consequently, application of the petitioners-defendants for amendment in their written statement would stand allowed. Thereafter, the learned trial court shall make an endeavour to decide the suit at an early date.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

4.7.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No