

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3885 of 2017 (O&M)

Date of decision: 30.05.2017

Udeyveer Singh Rana

... Petitioner

versus

Megh Nath and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Zorawar Singh Chauhan, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

Defendant No.1 challenges the order dated 11.05.2017 under Article 227 of the Constitution of India whereby the trial Court has declined the amendment in the written statement whereby an admission made was sought to be taken away by the proposed amendment.

The reasoning given by the trial Court is that it was a suit for specific performance of an agreement dated 19.06.2012 and the agreement had been admitted in the written statement to be correct. It was noticed that the defendant wanted to withdraw the admission made by him in paragraph Nos. 3, 4 & 5. The stage of the withdrawal was noticed that issues were already framed and the plaintiffs have led the evidence. Resultantly, it was held that it was a mischievous attempt made to change the colour and stand by the petitioner and therefore amendment could not be permitted.

The said fact is a matter of record and it is only the contention that the petitioner became wiser later on and he had not briefed his counsel in proper manner that amendment was sought. The law is settled on the issue that the amendments which are *mala fide* cannot be permitted to be withdrawn by filing an application for amendment, specially once the trial had commenced. The Court was then justified in declining the application. Reference can be made to the order of Hon'ble Supreme Court in **Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others, 2009 (2) RCR (Rent) 568** wherein the principles in this aspect had been laid down as under:

“67. On critically analyzing 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 fraudulently 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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be

undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

Thus there is no merit in the revision petition and is dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

30.05.2017

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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No