

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 4481 of 2015

DATE OF DECISION:02.03.2017

Dharamvir

.....Petitioner

Versus

Khushi Ram

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioner..

Mr. JP Sharma, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 21.5.2015 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Mohindergarh, whereby, application filed by the petitioner-plaintiff under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

Briefly, the facts of the case as made out in the present petition are that the petitioner-plaintiff filed a suit for possession by way of specific performance on the basis of agreement to sell entered into between the parties. Written statement to the suit was filed and thereafter issues were framed and evidence was also led by both the parties. As per case of the

petitioner, he later on came to know that a typographical error had occurred in the plaint and accordingly he filed an application under Order 6 Rule 17 CPC for amendment of the plaint. Said application was dismissed vide order dated 21.5.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that there is typographical mistake of date of agreement to sell in the plaint as the date was mentioned as 2.2.2009 instead of 2.3.2009. Learned counsel further submits that in case amendment of the plaint is allowed neither the nature of the suit will be changed nor other party will be prejudiced in any manner.

Learned counsel for the respondent has opposed the submissions made by learned counsel for the petitioner and contends that the mistake is not only in the plaint but in the agreement to sell and in the statements of the witnesses as well. The application has rightly been dismissed by considering these aspects.

Heard the arguments advanced by learned for the parties and have also gone through the impugned order and other documents available on the file.

Filing of suit, moving of an application for amendment of the plaint and passing of impugned order are not disputed. In the present case, the petitioner had entered into agreement to sell with the respondent on 2.3.2009. The stamp papers were purchased on 2.3.2009 and agreement to sell was also prepared on the same day i.e. 2.3.2009, however, the date in the agreement to sell was inadvertently mentioned as 2.2.2009. Defendant-responder filed written statement to the suit and issues were also framed. Thereafter, the petitioner came to know that a typographical error had

occurred in the plaint and wrong date of agreement to sell has been mentioned. Thereafter, the petitioner moved an application under Order 6 Rule 17 CPC for amendment of the plaint, which has been dismissed. A perusal of all the documents available on the file clearly shows that it is only a typographical error. Moreover, the petitioner wants to make amendment in the plaint with regard to date only and no prejudice is going to be caused to the other party and nature of suit is also not going to be changed.

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.”

Similarly, Hon'ble the Apex Court in the case of **Rameshkumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and others** 2012 (2) RCR (Civil) 739 has held that ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments.

In view of the facts and law position as discussed above, the present petition is allowed and impugned order dated 21.5.2015 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Mohindergarh is set aside. The trial Court is directed to allow the petitioner to amend the plaint as prayed for in the application subject to payment of cost of ₹15,000/- to be paid by the petitioner to the party opposite by way of draft.

March 02, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No