

CR No.4996 of 2016(O&M)
Date of decision : 31.07.2017

CORAM : HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Ms. Rajni Moria, Advocate for
Mr. Naveen Batra, Advocate
for respondents No.1, 3 and 4.

CM No.11935-CII of 2017

Main case:-

[2]. An application for amendment of the plaint was filed on the ground that defendants/respondents were restrained from interfering in the peaceful possession of the plaintiff and from

dispossessing them forcibly and from creating encumbrance over the suit land vide order dated 04.02.2011. In utter disregard to the interim order, defendants/respondents in connivance with each other, raised construction of rooms and toilet in the property in question by encroaching upon the same in the month of October/November, 2011. Since the order of injunction was violated, contempt proceedings were initiated against the defendants. At the same time, the plaintiff sought to incorporate these subsequent events in the plaint.

[3]. Trial Court dismissed the application on the ground that proceedings of contempt Court were not placed before the Court, nor the same were proved in any other manner. The incorporation of the alleged facts by way of amendment would change the nature of the suit itself.

[4]. I have heard learned counsel for the parties.

[5]. Evidently, vide order dated 04.02.2011, the interim order was passed. The application for amendment is totally based on the alleged subsequent events in the context of alleged violation of the interim order. Court is always competent to take cognizance of subsequent events. At the time of accepting or rejecting the prayer of amendment of the pleadings, the Court is not obliged to see the merits of the case. It is a settled principle of law that all *bona fide* amendments should be allowed.

[6]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties.

[7]. Before the amendment can be allowed, the Court should satisfy itself whether such an amendment is necessary for appropriate decision in the case. If the condition is not satisfied, the amendment can be rejected. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no prejudice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted.

[8]. At the time of issuance of notice of motion on 09.08.2016, following order was passed:-

“The counsel for the petitioner contends that during the pendency of the suit, subsequent change in circumstances had taken place, that necessitated filing of the application under Order 6 Rule 17 CPC for amendment in the plaint incorporating the relief of mandatory injunction. The suit is at the stage of plaintiff's evidence.

Notice of motion for 03.11.2016.

The petitioner-plaintiff is permitted to lead

evidence as contemplated in the amendment.”

[9]. Evidently, the petitioner was permitted to lead evidence as contemplated in the amendment. Today, learned counsel for the petitioner has submitted that the petitioner has already led evidence pursuant to the contemplated amendment and now the case is fixed for final arguments.

[10]. In view of above, I deem it appropriate to accept this revision petition. Impugned order dated 15.07.2016 passed by Civil Judge (Junior Division), Hoshiarpur is hereby set aside. Trial Court would be at liberty to hear the arguments on merits and pass order in accordance with law.

[Raj Mohan Singh]
Judge

31.07.2017

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No