

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4848 of 2017

Date of Decision: 27.7.2017

Bharat Sanchar Nigam Limited

---Petitioner

vs.

Mohinder Pal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Anil Rathee, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 3.5.2017 (Annexure P-7) passed by the Civil Judge (Junior Division), Garhshankar whereby the application under Order 6 Rule 17 of the Code of Civil Procedure (in short "CPC") for amendment of the plaint has been allowed.

The contesting respondents have filed a suit for permanent injunction restraining the defendants including the petitioner from installing telecommunication tower in the site marked 'ABCD' depicted in red colour and further restraining the defendants from creating such like tower activities from the suit land and committing any such tortuous acts in future.

The instant application seeking amendment of the plaint was filed on 15.7.2016 in order to add the relief of mandatory injunction directing the defendants to remove the telecommunication tower and stop the telecommunication activities on the site aforesaid situated in the abadi of village Bhawnipur/ Malkowal Tehsil Garhshankar which adversely affect lives of the plaintiffs as well as residents of the area.

Counsel for the petitioner has submitted that suit was instituted by the plaintiffs (contesting respondents) in the year 2013 and application for grant of interim injunction was decided on 25.1.2014 whereby the defendants including the petitioner were partly restrained from operating telecommunication tower or such like activities in the site in question till they obtain requisite permission and no objection certificate from the office of Town Planner, Hoshiarpur and Punjab Pollution Control Board, Patiala. Further argued that issues in the case were also framed on 25.1.2014. The petitioner obtained necessary permission/no objection from the authorities concerned and thereafter telecommunication tower which was installed prior to institution of the suit became operational in August 2014. The respondents/plaintiffs after availing number of opportunities for adducing evidence filed the instant application for amendment at a highly belated state. It is argued with vehemence that the instant application is clearly hit by the proviso appended to Rule 17 Order 6 CPC, therefore, the trial court has committed a serious error rather illegality by allowing amendment as prayed for.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

Indisputably, the telecommunication tower is stated to have become operational during pendency of the suit after the application for interim injunction was disposed of by the trial court vide order dated 25.1.2014. The cause of action to seek mandatory injunction to restrain the petitioner and others from operating telecommunication tower accrued to the plaintiffs during pendency of the suit. On a pointed query raised by the Court, counsel for the petitioner has fairly informed that the plaintiffs could file an independent suit seeking mandatory injunction against operation of the telecommunication tower installed at the place in question.

As per the settled position in law, delay itself cannot be a ground to deny amendment of the pleadings unless the Court arrives at a conclusion that delay on the part of an applicant is mala fide or the same is actuated by an ulterior motive to achieve. Counsel for the petitioner has not advanced any arguments to say that delay in filing the application for amendment sans bona fide or the same is mala fide.

This brings the Court to contention with regard to application being barred by the proviso appended to Rule 17 Order 6 CPC by way of amendment in the year 2002. The Hon'ble Apex Court in ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, 2010 (1) RCR (Civil) 27***, has culled out certain factors to be taken into consideration while dealing with the application for amendment of pleadings. The relevant extract from para 67 and 68 of the judgment reads as follows:-

“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 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.

68. 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.”

In *Abdul Rehman and another vs. Mohd. Ruldu and others*, 2012(4) RCR (Civil) 481, the Court has held, in para 8, reads as follows:-

“8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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 above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in ***J. Samuel and Others v. Gattu Mahesh and others, 2012 (1) Recent Apex Judgments (R.A.J) 226: 2012(1) R.C.R. (Civil) 903 : (2012) 2 SCC 300 and Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and others, 2012(2) Recent Apex Judgments (R.A.J.) 318: 2012(2) R.C.R. (Civil) 739: (2012) 5 SCC 337.***

Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

In the light of the principles culled out in *Revajeetu Builders and Developer’s case (supra)* and the observations made in *Abdul Rehman’s case (supra)*, it becomes a settled position in law that the Court is competent to allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Further, the main purpose for allowing the amendment is to minimize the litigation.

Keeping in view the fact that as the respondents/plaintiffs could file an independent suit for mandatory injunction for seeking the relief claimed, allowing the proposed amendment would avoid multiplicity of litigation. I would hasten to add that counsel for the petitioner has failed to make any submission much less to convince this Court that in case the proposed amendment is allowed, it would cause such a serious prejudice to the petitioner for which cost is not a remedy.

For the foregoing reasons, I do not find any error much less illegality in the impugned order warranting intervention. Accordingly, the petition fails and is dismissed in limine. Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

27.7.2017

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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No