

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

**Civil Revision No. 488 of 2017(O&M)
Date of decision: 15.2.2017**

Sher Singh and others

...Petitioners

Versus

Nagar Council, Sunam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S.Sallar, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

CM No. 3234-CII-2017

Applicant seeks preponment of the date of the hearing.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Date of hearing is ordered to be preponed from 3.3.2017 to today, i.e. 15.2.2017.

CM stands disposed of.

CR No. 488 of 2017

Present revision petition under Article 227 of the Constitution of India, at the hands of the plaintiffs, is directed against the order dated 18.11.2016 passed by learned Additional District Judge, whereby application under Order 6 Rule 17 of the Code of Civil Procedure ('CPC' for short), moved by the petitioners was dismissed, declining the amendment of the plaint during pendency of first appeal of the plaintiffs-petitioners.

Heard learned counsel for the petitioners.

It is a matter of record and not in dispute that petitioners filed a suit for declaration under Order 1 Rule 8 CPC in representative capacity. Their suit was dismissed by learned trial court vide judgment and decree dated 28.8.2014. Dissatisfied, plaintiffs filed their first appeal. It was during the pendency of their first appeal that petitioners filed application dated 11.4.2016 (Annexure P-3) under Order 6 Rule 17 CPC, seeking amendment in their plaint.

A bare perusal of the impugned order would show that learned first appellate court was well within its jurisdiction to pass the impugned order, which has been found based on sound reasons and the same deserves to be upheld. Admittedly, petitioners did not move the application under Order 6 Rule 17 CPC, seeking amendment in their plaint, at the time of filing their appeal. It was fairly conceded by learned counsel for the petitioners that application for amendment in the plaint was filed after about two years of filing of appeal. When asked to refer to any averment taken in the application for amendment (Annexure P-3), explaining this delay of about two years, learned counsel for the petitioners had no answer and rightly so, it being a matter of record.

In fact, bare reading of the application for amendment (Annexure P-3) would make it crystal clear that petitioners did not make any effort to explain the delay of about two years, as to why they could not move this application at the time of filing the appeal. Petitioners have also failed to comply with the requirements of law contained in Order 6 Rule 17 CPC, particularly after its amendment vide Act No. 22 of 2002, which was made applicable w.e.f. 1.7.2002. It was not even the pleaded or argued case on behalf of the petitioners that despite due diligence, during the course of trial of their suit before learned trial court, they could not move such an application, seeking

amendment in their plaint.

Further, facts which were sought to be introduced by way amendment in the plaint were very well known to the petitioners-plaintiffs right from day one. It is also not their case that some new facts came to their notice after dismissal of their suit by learned trial court. Having said that, this Court feels no hesitation to conclude that learned first appellate court committed no error of law, while passing the impugned order, dismissing the application under Order 6 Rule 17 CPC moved by the plaintiffs-petitioner during pendency of their first appeal and the same deserves to be upheld, for this reason also.

As noticed hereinabove, provisions of Order 6 Rule 17 CPC had been amended in the year 2002 and the amended provisions cannot be ignored. Coming to the judgment of the Hon'ble Supreme Court in **Pandit Ishwardas Vs. State of Madhya Pradesh and others, (1979) 4 SCC 163**, relied upon by learned counsel for the petitioners, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the petitioners, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Reverting to the facts of the case in hand, petitioners have failed to make out a case for amendment in their plaint, at this belated stage. They did not even make an effort to explain the inordinate long delay in filing their application (Annexure P-3), after about two years of filing their first appeal.

Petitioners failed to exercise due diligence on their part; firstly during the pendency of their suit before learned trial court and secondly, at the time of filing their first appeal, because they filed the application (Annexure P-3) after about two years of filing of the appeal and that too, without making any effort to explain this delay. Under these circumstances, it can be safely concluded that learned Additional District Judge was well justified in passing the impugned order, declining the application of the petitioners during the pendency of their first appeal. Although it is true that first appeal is continuation of the suit, yet, it is equally true that petitioners were duty bound to meet the requirements of law, as contained in the amended provisions of Order 6 Rule 17 CPC. Petitioners failed to show that in spite of due diligence on their part, they were unable to move such an application at an earlier point of time. In this view of the matter, it is unhesitatingly held that learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **L.J.Leach and Co.Ltd., and another Vs. Messrs. Jairdine Skinner and Co., 1957 AIR (SC) 357, State of Kerala Vs. The General Manager, Southern Railway, Madras, 1976 AIR (SC) 2538, Muni Lal Vs. Oriental Fire and General Insurance Co. Ltd, 1996 (1) SCC 90 and Ajendera prasadji N. Pande V. Swami Keshavprakeshdasji N. 2007 (1) RCR (Civil) 481** as well as judgment of this

Court in **Shamshad Begum VS. Mohd. Hassan Murtaza and others, 2016 (5)**

RCR (civil) 987.

In fact, keeping in view the totality of facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, present one has not been found to be a fit case for permitting amendment of plaint during pendency of the first appeal of the plaintiffs, particularly when petitioners have failed to explain the inordinate delay of about two years on their part. They also failed to show that in spite of due diligence on their part, they were unable to move such an application at an earlier point of time either before learned trial court or before learned first appellate court.

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 the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

15.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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