

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.6022 of 2016
Date of Decision: 01.09.2017**

**Sangrur District Corp Milk Producers Union Through
General ManagerPetitioner**

Vs

**National Insurance Co. Ltd. And anr.
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sehajbir Singh, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed the present revision against the order dated 04.07.2016 whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for recovery along with interest on account of loss of milk suffered due to tanker turned turtle. In the written statement filed by the defendants the factum of accident was admitted, however involvement of milk tanker No.PB-11AP-9241 was denied as the same was never engaged. In the subsequent part of the written

statement in para No.6, the defendants pleaded that the defendants received information regarding the alleged accident from the plaintiff Union and thereafter the defendants appointed the Surveyor to visit the spot. The Surveyor visited the spot and also visited the Sangrur District Co-operative Milk Producer Union and met one Sh. Gulzar Singh, Incharge Milk collection and said Gulzar Singh told the Surveyor that the milk tanker bearing No.PB-11AP-9248 was involved in the accident. By way of amendment petitioner sought to amend the plaint in order to replace registration number of the truck i.e. PB11-AP-9241 to PB-11AP-9248 in para No.3 of the plaint and the prayer was declined by the trial Court vide the impugned order.

[3]. Learned counsel for the petitioner contended that amendment in the pleadings has to be liberally construed unless and until the same takes away the valuable right of the opposite party. The error in terms of registration number of the truck is typographical error. The trial Court dismissed the proposed amendment on the ground of delay, since two of the plaintiff witnesses have been examined and the defendants have already taken plea in the written statement that wrong number of the truck was mentioned in the plaint. It is a settled principle of law that all *bona fide* amendments in the pleadings which are necessary for the purposes of determination of the real

controversy should be allowed.

[4]. Learned counsel for the respondents on the other hand by relying upon **Jaspal Kaur and another vs. Mohinder Singh and others, 2014(9) R.C.R. (Civil) 2935** contended that all the facts sought to be pleaded by amendment of the plaint were already in the knowledge of the plaintiff. Two of the plaintiff witnesses have already been examined before filing the amendment application. Acceptance of prayer for amendment of the plaint would delay the proceedings and the same has rightly been declined by the trial Court.

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

[6]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra**

Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead)
and ors. (2007) 6 SCC 737 and **Rajesh Kumar Aggarwal vs.**
K.K. Modi, AIR 2006 SC 1647.

[7]. 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. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material

prejudice to the opposite party and is not capable of being compensated in terms of cost.

[8]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not satisfied, the amendment cannot be allowed. 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 injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way it is intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment following principles are required to be taken into consideration:-

a. Whether the amendment sought to be made is

imperative for effective adjudication of the matter?

- b. Whether the amendment is *bona fide* or *mala fide*?
- c. The amendment should not cause such prejudice to the opposite party which cannot be compensated in terms of adequate cost.
- d. Whether the proposed amendment changes the nature and character of the suit?

As a Rule the Court should reject such amendments if fresh suit on intended cause of action is barred by limitation on the date of filing of application of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In **Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR**

(Civil) 27, the Hon'ble Apex Court highlighted the aforesaid principles to be followed meticulously.

[9]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed if the same subserves the cause of justice and avoids further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should

try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[10]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965,** held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[11]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or *mala fide* in nature? The proviso inserted by way of amendment has

to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763**, the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844**, **Kailash vs. Nanhku and ors., (2005) 4 SCC 480**, and **Rajesh Kumar Aggarwal's** case (supra) reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies

the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078** held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse. The Court must do full and complete justice between the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court.**

[12]. The analogy has been considered in catena of precedents as discussed above. The finding cannot be recorded in isolation as this Court considered the issue in detail on the strength of precedents mentioned in the preceding paras, therefore, the proviso to Order 6 Rule 17 CPC has to be construed in the given situation in order to ascertain the proposed amendment is necessary for just decision of the case or not?

[13]. Since two of the plaintiff witnesses have been

examined and delay in itself is no ground to decline the proposed amendment which is otherwise very essential for just decision of the case. Difference in mentioning of registration number of the truck is on the premise of typographical error and the same can be rectified at this stage and would not cause any change in the cause of action or nature of the suit.

[14]. In view of above, this revision petition is accepted and the impugned order is set aside. The application filed by the plaintiff/petitioner under Order 6 Rule 17 CPC for amendment of the plaint is allowed, however subject to payment of cost of Rs.15,000/- to be paid to the defendants. The payment of cost shall be the condition precedent for allowing indulgence for amendment of plaint by the trial Court.

September 01, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No