

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 688 of 2015

DATE OF DECISION: 04.07.2017

Indiabulls Housing Finance Ltd.

.....Petitioner

Versus

Madhu Shree Modi and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. V.K. Sachdeva, Advocate
for the petitioner.

Mr. R.K. Shukla, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The petitioner has approached this Court by way of filing the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 23.1.2015 (Annexure P-1) passed by Additional Civil Judge (Senior Division), Patiala, whereby, the application filed by the respondent-plaintiffs under Order 6 Rule 17 CPC for amendment of the plaint has been allowed and the application filed by the petitioner-defendant under Order 7 Rule 11 for rejection of the plaint for non-affixation of Court fee has been rendered infructuous.

Briefly, the facts of the case as made out in the present petition are that respondent-plaintiffs filed a suit for compensation on account of damages. Suit was contested by the petitioner-defendant. During pendency

of the suit, an application was moved by petitioner-defendant under Order 7 Rule 11 CPC for dismissal of the suit on the ground that the respondent-plaintiffs have affixed the Court fee for a sum of ₹200/- only, whereas, the suit was valued for ₹2 crores and they were required to pay proper court fee. Reply to the application was filed by the respondent-plaintiffs. When the case was listed for consideration of the application filed by the petitioner-defendant for dismissal of the suit, an application was filed under Order 6 Rule 17 CPC by the respondent-plaintiffs for amendment of the plaint and to delete para No. 20 of the plaint as well as to delete words “₹ 2 crores” in the prayer clause and also to renumber the paras. Reply of the said application was also filed by the petitioner-defendant by raising certain grounds and ultimately the application filed by the respondent-plaintiffs under Order 6 Rule 17 CPC for amendment of the plaint was allowed and the application filed by the petitioner-defendant under Order 7 Rule 11 CPC for dismissal of the suit filed by the respondent-plaintiffs on the ground of non-affixation of Court fee was rendered infructuous vide order dated 23.1.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner-defendant submits that respondent-plaintiffs while filing the suit has claimed damages to the tune of ₹2 crores and affixed the Court fee of ₹200/- only, whereas, the court fee was to be affixed on the value of the suit i.e. ₹ 2 crores in terms of Court Fee Act, 1870. Learned counsel further submits that when the application for dismissal of the suit under Order 7 Rule 11 CPC was pending consideration, an application for amendment of the plaint under Order 6 Rule 17 CPC was also filed by the respondent-plaintiffs just to avoid court

fee. Learned counsel also submits that the application for amendment of the plaint has wrongly been allowed by the trial Court without recording any finding as to whether the amendment was necessary for just decision of the case or it was filed with mala fide intention. It is also the argument of learned counsel that the impugned order dated 23.1.2015 is against law and facts of the case as amendment has been allowed without passing any speaking order. Even the reply filed to the application for amendment has not been taken into consideration. The purpose was just to avoid the Court fee and the same is against provisions of law and public policy. The suit was filed for claiming the damages, which was quantified and Court fee was to be affixed keeping in view the claim in the suit. The trial Court has failed to appreciate that the application filed by the respondent-plaintiffs was not maintainable as it was filed with mala fide intention and to relinquish the claim over the specific amount just to achieve the indirect benefit by not affixing the requisite court fee. At the end, learned counsel for the petitioner submits that by allowing the application for amendment of the plaint, the application filed under Order 7 Rule 11 CPC has become infructuous on the basis of statement made by counsel for the respondent-plaintiffs. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others** 2010 (1) RCR (Civil) 27, **Vidyabai and others Vs. Padmalatha and another** 2009 (1) RCR (Civil) 763, **J. Samuel and others Vs. Gattu Mahesh and others** 2012 (1) RCR (Civil) 903, of this Court in the cases of **Ranjit Kaur and others Vs. Punjab State Electricity Board and another** 2007 (1) Civil Court Cases 793, **Sandeep Sobti and another Vs. Global Broadcast News and others** (C.R. No.

6027 of 2007 decided on 21.3.2009), **Manjeet Singh Vs. Beant Sharma** (C.R. No. 6146 of 2010 decided on 30.7.2012), **Sham Jindal Vs. Kapil Jindal and others** (CR No. 1407 of 2008 decided on 20.2.2009), **Smt. Viney Bala Vs. Sardari Lal and others** (C.R. No. 4705 of 2009 decided on 20.10.2009), **Anita Sharma and others Vs. Maninder Kaur** (C.R. No. 5292 of 2008 decided on 3.10.2011), **Labh Singh and another Vs. Hem Raj** (CR No. 6137 of 2010 decided on 28.7.2011), **Lokender Kumar Saini Vs. Swami Sarva Nand Chela Nitya Nand and others** (CR No. 6776 of 2012 decided on 16.7.2013), **Bishan Singh and another Vs. Roshan Kaur and others** (C.R. No. 8341 of 2010 decided on 28.7.2011), **Smt. Shyama Deswal Vs. Ram Charan** (CR No. 1285 of 2007 decided on 17.11.2008) and of Delhi High Court in the case of **M/s K.V. Wall Mount Pvt. Ltd. And others Vs. State Bank of India** (W.P.(C) 8199/2013 decided on 8.12.2014), in support of his contentions.

Learned counsel for the respondent-plaintiffs submits that when application for amendment of the plaint has been allowed then there was no reason to continue with the application for dismissal of the suit as the amendment was allowed by relinquishing the specific amount of damages. The amendment has rightly been allowed and no prejudice has been caused to the party opposite. Learned counsel for the respondent has relied upon the judgments of this Court in the cases of **Hem Raj Vs. Harchet Singh and others** 1993 Civil Court Cases 48, **Subhash Chander Goel Vs. Harvind Sagar** AIR 2003 Punjab and Haryana 248, **State of Punjab and others Vs. Jagdip Singh Chowhan** 2005 (2) Civil Court Cases 37 (P&H) and **Manpreet Singh Vs. Gurmail Singh and others** 2016 (4) Civil Court Cases 503, in support of his contentions.

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

The facts relating to filing of the suit and thereafter moving of applications for dismissal of the suit on the ground of not affixing the requisite court fee and amendment of the plaint are not disputed. It is also not disputed that the application for amendment under Order 6 Rule 17 CPC was allowed and the application moved under Order 7 Rule 11 CPC for dismissal of the suit was dismissed as infructuous.

Initially the suit was filed for claiming damages by mentioning specific amount without affixing the requisite court fee. Subsequently, an application was moved by the petitioner-defendant for dismissal of the suit on the ground of not affixing the proper court fee. Thereafter an application was also moved by respondent-plaintiffs for amendment of the plaint under Order 6 Rule 17 CPC. The specific amount claimed as damages in the suit was relinquished by the respondents-plaintiffs and accordingly amendment was allowed by the trial Court. When application for amendment was allowed and no specific amount was claimed as damages, the question of affixing the court fee by considering the damages did not arise and as such the application for dismissal of the suit was rendered infructuous.

Now the question for consideration before this Court is as to whether the amendment of the plaint was rightly allowed or not.

Order 6 Rule 17 of the CPC enables the parties to make amendment of the plaint, which reads as under:-

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his

pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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.”

On perusal of the said provision, it is apparent that amendment can be allowed by the Court at any stage of the proceedings but it is to be seen whether the amendment allowed is just and the same is necessary for the purpose of determining the real controversy between the parties. It is settled law that the application for amendment is to be allowed but subject to certain conditions i.e. i) when the nature of suit is not going to be changed; ii) when the amendment is not going to result in introducing new cause of action and not to prejudice the interest of other party; iii) when allowing the amendment is not going to defeat the law of limitation. This view was taken by Hon'ble the Apex Court in the case titled as **Raj Kumar Gurawara (dead) through LRs Vs. S.K. Sarwagi and Company Private Limited and another** 2008 (14) SCC 364. It is also to be seen while allowing the application as to whether amendment sought is imperative for proper and effective adjudication of the case, also such amendment is bona fide or mala fide and the amendment should not cause any prejudice to the other side which cannot be compensated adequately in terms of money. It is also to be seen that refusal of amendment would in fact lead to injustice

or lead to multiple litigation. While allowing the application for amendment, it is also to be seen whether the proposed amendment constitutionally or fundamentally changes the nature and character of the suit or not. Amendment can be declined by the Court in case a fresh suit on the amended claim would be barred by limitation on the date of application. There are certain other important factors, which may be kept in mind while dealing with the application filed under Order 6 Rule 17 CPC.

In the present case by allowing application for amendment of the plaint neither the nature of the suit is going to be changed as only the specific amount of damages which was earlier mentioned has been relinquished and no prejudice has been caused to the other party. The only argument, which has been raised by learned counsel for the petitioner is that the amendment has been sought only after moving an application under Order 7 Rule 11 CPC for dismissal of suit as proper court fee was not affixed. Even in case the specific amount has been claimed as damages even then also it is to be considered by the Court as to how much damages are to be awarded to the plaintiff. In case there is a difference in court fee on the amount claimed in the suit or awarded by the Court, the plaintiff can be asked by the Court to affix the court fee according to amount of damages awarded by the Court. It can be done during pendency of the suit as well as at the time of decision of the suit. The judgments relied upon by learned counsel for the petitioner are not relevant to the facts and circumstances of the case.

Keeping in view the facts and circumstances of the case and law position as discussed above, I find no force in the arguments advanced by learned counsel for the petitioner. Accordingly, no interference is

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required with the impugned order dated 23.1.2015 and the revision petition being devoid of any merit is hereby dismissed.

04.07.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No