

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CR-6644-2017 (O&M)

Date of Decision:27.09.2017

Meharchand

.....Petitioner

Versus

Saraswati Devi

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Sushil Kumar Verma, Advocate,
for the petitioner.**

RAMESHWAR SINGH MALIK, J.(Oral)

Instant civil revision petition, filed under Article 227 of the Constitution of India, at the hands of defendant, is directed against the order dated 13.09.2017 (Annexure P-7) passed by the learned trial court, whereby application moved by the defendant-petitioner under Order 6 Rule 17 of the Code of Civil Procedure (for short “the CPC”), seeking amendment in his counter-claim, was dismissed by the learned trial court.

Heard learned counsel for the petitioner.

Learned counsel for the petitioner has fairly conceded that on conclusion of pleadings of the parties, the learned trial court framed the issues long back. Thereafter, taking the pleadings of the parties to be correct including the counter-claim filed by the defendant, plaintiff started leading her evidence and concluded the same. After the plaintiff has concluded her evidence, defendant-petitioner started leading his evidence.

Defendant had already examined one witness, as stated by learned counsel

for the petitioner. It was at that stage that the defendant-petitioner moved an application under Order 6 Rule 17 CPC, seeking amendment in his counter-claim. In case such an amendment at this belated stage of the suit is granted, very purpose of amendment of 2002 by way of Act No.22 of 2002 incorporating the proviso at the end of Order 6 Rule 17 CPC would stand defeated, particularly when it is not the pleaded or argued case on behalf of the petitioner that despite exercise of due diligence on his part, the said amendment could not be sought at an earlier point of time. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserve to be upheld.

So far as the judgments of the Hon'ble Supreme Court as well as of this Court relied upon by learned counsel for the petitioner in Rameshkumar Agarwal Versus Rajmala Exports Pvt. Ltd. & others, 2012(2) R.C.R. (Civil) 739, T.N.Alloy Foundry Co.Ltd. Versus T.N.Electricity Board and others, 2004(3) SCC 392, A.K.Gupta and Sons Ltd. Versus Damodar Valley Corporation, 1967 AIR (SC) 96 and Gurpal Singh Versus Kamaljit Kaur and another, 2017(3) R.C.R.(Civil) 659, are concerned, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, 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 **Padmasundara Rao (Dead) 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**.

Coming to the peculiar fact situation obtaining on record of the instant case, it has gone undisputed that the petitioner had more than one occasions to seek amendment in his counter-claim, if it was so necessary. However, he did not do so for the reasons best known to him. He could have sought amendment before framing of the issues or immediately thereafter but he did not do so. Then the plaintiff started leading her evidence on the basis of the pleadings as they stand. During the course of leading evidence by the plaintiff, defendant-petitioner kept mum. Even after the plaintiff had concluded her evidence, petitioner did not seek any such amendment and started leading his own evidence. As noticed above, petitioner himself has already examined one witness. Under these undisputed circumstances, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

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 above-said observations made, instant revision petition stands dismissed, however, with no order as to costs.

September 27, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No