

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7137 of 2017 (O&M)

Date of Decision: 1.11.2017

Basheer.

...Petitioner

versus

Ishrat and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE B.S.WALIA

Present: Mr.Rakesh Dhiman, Advocate for the petitioner.

Mr.R.S.Hooda, Advocate for respondent Nos.1 and 2.

B.S.Walia, J.(Oral)

1. Challenge in this revision petition is to order dated 21.8.2017 passed by the learned Civil Judge (Sr. Division) Mewat vide which the application moved by the petitioner-plaintiff under Order 6 Rule 17 read with Section 151 CPC was dismissed.

2. Brief facts of the case leading to the filing of this revision petition are that agreement to sell was executed between the petitioner-plaintiff and respondent-defendant No.1 on 14.07.2011 with 14.08.2011 as the target date for execution of the sale deed. On failure of respondent-defendant No.1 to execute the sale deed, suit for specific performance of agreement was filed.

3. Thereafter, application for amendment to incorporate loss of original agreement to sell and for permission to file photocopy thereof was allowed on 13.05.2014 on 'No Objection' being accorded by respondent-defendant No.1.

4. Thereafter, application for impleading subsequent purchasers of the property in question from respondent-defendant No.1 as respondent-defendant Nos. 2 and 3 was allowed on the same day the application was moved i.e. 05.03.2015 on 'No Objection' being accorded by respondent-defendant No.1. Initially issue's were framed on 28.10.2014 and after impleadment of defendant Nos. 2 & 3 additional issues were framed on 03.12.2015.

5. Thereafter, application for amendment was moved in May 2017 to incorporate assertion that subsequent purchasers-respondent Nos. 2 and 3 were aware of the existence of agreement to sell dated 14.07.2011 between the petitioner-plaintiff and respondent-defendant No.1 and had purchased the property despite knowledge of the same, therefore, they were not bonafide purchasers. Amendment was also sought to challenge sale deed dated 02.03.2012 by respondent-defendant No.1 in favour of respondent-defendant Nos. 2 and 3.

6. It needs mentioning here that issue No.1 was framed against respondent-defendant No.1 on 28.10.2014 whereafter application for impleading respondent-defendant Nos. 2 and 3 as subsequent purchasers of the property in question from respondent-defendant No.1 was allowed on 'No Objection' being accorded by respondent-defendant No.1. Thereafter, written statement was filed by respondent-defendant Nos. 2 and 3 on 03.12.2015. Thereafter, additional issues were framed on said date.

7. Relevant extract i.e. Paragraph No. 5 of the application under Order 6 Rule 17 read with Section 151 CPC i.e. Annexure P-1 is reproduced hereunder :

“That the plaintiff filed the application under Order 1 Rule 10 of CPC dated 5.3.2015 for impleadment of the parties to Asif Islam and

Majidan by pleading that the sale deed 5614 dated 2.3.2012 executed by Israt in favour of Islam and Asif and GPA Vasika No.51/4 dated 20.2.2008 executed in favour of Majidan are illegal unlawful and does not binding upon the rights of plaintiff as they are not bonafide purchaser of the suit land. But inadvertently the plaint could not amend by the plaintiff in this regard. Moreover defendant Asif and Islam filed the written statement by claiming that they are bonafide purchaser of the suit land. The claim of the defendant No.2 has been refuted by the plaintiff since very beginning. Moreover the case of plaintiff (suit for specific performance) is based upon..... That the defendant No.2 had knowingly purchased the suit property vide sale deed Vasika No.5614 dated 2.3.2014 from Israt, after execution of the agreement to sell dated 14.7.2011 and it proved that the defendant No.1 was not competent to execute the said sale deed Vasika No.5614 in favour of defendant No.2.”

8. Learned counsel for the petitioner contended that the application for amendment was merely clarificatory of the existing position as already set out in the plaint and in the circumstances, the action of the learned trial Court in refusing the amendment, is legally unsustainable.

9. Per contra learned counsel for the respondents contended that the application was dismissed by the learned trial Court in view of non fulfillment of the requirement under the proviso to Order 6 Rule 17 of the CPC. Learned counsel for the respondents contended that in terms of the proviso to Order 6 Rule 17 CPC, the *sine qua non* for amendment was that despite due diligence, the party seeking amendment could not have raised the matter before the commencement of the trial. Learned counsel contended that a perusal of the factual position revealed beyond an iota of doubt that there was absolute want of exercise of due diligence, consequently the application for amendment was rightly dismissed.

10. Learned counsel for the respondent further contended that the

petitioner-plaintiff was aware of the factual position when he moved the application on 05.03.2015 under Order 1 Rule 10 CPC for impleading the subsequent purchasers from respondent-defendant No.1 which was allowed by respondent defendant No. 1 giving 'No Objection' to the application. Learned counsel contended that in the aforementioned background, the only objective of the petitioner in seeking to amend the plaint to incorporate a challenge to the sale deed dated 02.03.2012 and GPA dated 20.02.2008 was with a view to fill in the lacuna.

11. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in ***Abdul Rahman and another Vs. Mohd.Ruldu and others 2012 (10) JT 97*** to contend that amendment can be allowed at any stage of the proceedings for the purpose of determining the real question in controversy between the parties so as to minimise litigation. Learned counsel also relied upon the decision of this Court in CR No.5918 of 2015 decided on 29.10.2015 in case titled as **Harbhajan** (deceased) through his LR **Vs. Raghbir @ Raghbir** (deceased) through his LRs and others to contend that even if the party seeking amendment was remiss in pursuing his case, the amendment could not be declined without assessing the claim in terms of Order 6 Rule 17 CPC.

12. Per contra, learned counsel for the respondent relied upon the decision of the Hon'ble the Supreme Court in ***Vidyabai and others Vs. Padamalatha and another 2009(2) SCC 409***. Relevant extract of the same is reproduced as under :

7. By reasons of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:-

“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 the trial”

It is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

13. Learned counsel for the respondent also relied upon the decision of this Court in ***Bahadur Singh and another Vs. Avtar Singh 2007(3) PLR***

628. Relevant extract of the same is reproduced hereunder :

“5. That the amendment of pleadings should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. This plea of the petitioner *prima facie* cannot be accepted in view of the fact that the amendment sought by the petitioner was within the knowledge of the petitioners when the suit was filed or in any case when the written statement was filed and the application moved by Jasbir Singh and Jagdeep Singh for being impleaded as parties. In view of proviso to Order 6 Rule 17 of the Civil Procedure Code amendment with regard to the facts which were within knowledge of the petitioners or could be found with due diligence cannot be allowed after commencement of the trial and in the present case, the trial has already commenced and, therefore, the learned trial Court was right in rejecting the application for amendment.”

On the basis of the aforementioned decision of the Hon'ble Supreme Court, learned counsel contended that no doubt amendment of pleadings is to be allowed liberally since procedure is merely a hand maid in the administration of justice but amendment is not permissible where the trial has commenced and there is want of due diligence.

14. I have considered the submissions made by learned counsel for the parties and have gone through the record. Admittedly, the petitioner moved an application under Order 1 Rule 10 CPC on 05.03.2015 for impleading the subsequent purchasers of the property in question as defendant Nos. 2 and 3. The same was allowed on the very same day i.e. 05.03.2015 on 'No Objection' being accorded by respondent-defendant No.1. Thereafter, written statement was filed by respondent-defendant Nos. 2 and 3 on 03.12.2015 whereafter additional issues were framed on the same day whereas the application for amendment was moved on 5th May 2017 for incorporating amendment reflected in paragraph No.5 of the application (Annexure P-1) i.e. almost 1½ years from the date of framing of the issues. The case at this stage is listed for rebuttal evidence and arguments. Trial commences with effect from the date of framing of issues which in this case was on 03.12.2015 though initially issues had been framed on 28.10.2014. Proviso to Order 6 Rule 17 of CPC as well as the law in respect thereto is well settled. Amendment can be allowed at any stage of the proceedings for determining the real question in controversy provided that where the application for amendment has been moved after the commencement of the trial the application for amendment can be allowed only if the Court comes to the conclusion that despite exercise of due diligence, the party could not have raised the matter before the commencement of the trial. In the instant case, the petitioner was aware of the subsequent transaction i.e. sale of the property in question by respondent-defendant No.1 to respondent-defendant Nos. 2 and 3 on 02.03.2012 as he had moved an application under Order 1 Rule 10 CPC for impleading defendant Nos. 2 and 3 on 05.03.2015 which was allowed on the same day on no objection by respondent defendant

No.1. Thereafter, additional issues were framed on 03.12.2015. Accordingly, it cannot be lost sight of that the petitioner was aware of the factual position in respect of which amendment has been sought vide application dated 5th May 2017 prior to the framing of the issues i.e. on 05.03.2015.

15. In the circumstances, by no stretch of imagination it can be said that the petitioner had exercised due diligence in moving the application for amendment on 5th May 2017. Consequently, the proposed amendment could not have been allowed in view of the proviso to Order 6 Rule 17 CPC as well as the decision of the Hon'ble Supreme Court as well as of this Court as referred to above. Accordingly, finding no merit in the revision petition, the same is dismissed. No order as to costs.

01.11.2017
Meenu

(B.S.Walia)
Judge

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No