

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7592 of 2015(O&M)

Date of Decision:11.8.2017

Mohinder Pal and another

---Petitioners

vs.

Jasbir Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munish Gupta, Advocate
for the petitioners

Mr. K.S.Dadwal, Advocate
for the respondents

Rekha Mittal, J.

The present petition directs challenge against order dated 30.9.2015 passed by the Civil Judge (Junior Division), Hoshiarpur (hereinafter to be referred to as “the trial court”) whereby application filed by the respondents/plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure (in short “CPC”) for amendment of the plaint has been allowed.

The respondents-plaintiffs filed a suit for mandatory injunction directing the defendants-petitioners to complete sale deed

dated 29.7.2010 and get it registered in favour of plaintiff No. 1 on his expense regarding the shop detailed in head note of the plaint. In the alternative, relief for confirmation of possession by way of specific performance of agreement to sell dated 1.4.2010 and incomplete sale deed dated 29.7.2010 or recovery of Rs. 5,80,000/- which stood paid alongwith interest at the rate of 12% per annum till realization has been prayed for.

The parties adduced evidence in support of their contentions and when the case had reached the stage of adducing evidence in rebuttal by the respondents/plaintiffs and arguments, the instant application was filed to add the facts detailed in sub para (a) of para 2 of the application (annexure P-3). After filing of reply by the petitioners/defendants and having heard counsel for the parties, the proposed amendment was allowed subject to payment of costs of Rs. 500/-.

Counsel for the petitioners has submitted that as per averments raised in the application, ingredients regarding readiness and willingness could not be mentioned in so many words due to inadvertence and negligence, therefore, the applicants-plaintiffs may be allowed to amend the plaint in terms of proposed amendment, detailed in sub para (a) of para 2 of the application. It is argued with vehemence that inadvertence or negligence does not constitute due diligence, therefore, application filed by the respondents is clearly hit

by proviso appended to Rule 17 Order 6 CPC. In support of his contention, he has placed reliance upon judgment of Hon'ble the Supreme Court **J. Samuel and others vs. Gattu Mahesh and others 2012 (1) RCR(Civil) 903.**

Another submission made by counsel is that the respondents/plaintiffs in paras 4 and 5 of the plaint have averred that they have already paid the entire sale consideration of Rs. 5,80,000/- but the petitioners/defendants seriously dispute receipt of an amount of Rs. 1,80,000/- on 29.7.2010 and as such allegations raised by the respondents-plaintiffs either with regard to payment of entire sale consideration or drafting of the sale deed on stamp papers are nothing but a bundle of lies.

Counsel representing the respondents-plaintiffs has supported the impugned order with the submissions that judicial discretion exercised by the court below does not warrant intervention in exercise of revisional jurisdiction as the trial court has not committed any error much less perversity. It has further been argued that in **J.Samuel and others' case (supra)**, application for amendment of the plaint to incorporate specific pleading in compliance of Section 16(c) of the Specific Relief Act (in short "the Act") was filed after conclusion of trial and reserving the matter for orders, therefore, the petitioners cannot draw similarity between the facts of the said case and the case at hand. Further submitted that in the said case, plea taken by

the applicant for failure to plead the necessary ingredients of Section 16 (c) of the Act was due to typographical error, Hon'ble the Supreme Court did not accept this explanation of the applicant by holding that the only reason stated so in the form of an affidavit is omission by typographical mistake. Admittedly, it is not an omission to mention a word or an arithmetical number. The omission is with reference to specific plea which is mandated in terms of Section 16(c) of the Act.

Counsel would further argue that despite addition of proviso to Rule 17 of Order 6 CPC, amendment can be allowed at any stage of the proceedings unless it causes a prejudice to the other side for which he cannot be compensated with costs. Further argued that Hon'ble the Supreme Court of India in **Mahila Ramkali Devi and others vs. Nandram (D) Through Lrs. and others 2015(5) RCR (Civil) 562** has held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations. It has further been held that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure.

Further reliance has been placed upon judgment of this Court **Pawan Kumr Garg vs. Harbans Singh 2015(7) RCR(Civil) 647** wherein revision against order passed by the trial court allowing

amendment of the plaint to implead the averments regarding readiness and willingness as mandatorily to be stated as per requirements of Section 16(c) of the Act was dismissed.

Counsel has further relied upon judgment of Hon'ble the Supreme Court **Revajeetu Builders and Developers vs. Narayanaswamy and sons and others 2010 (1) RCR (Civil) 27** wherein Hon'ble the Supreme Court has culled out certain principles to be taken into consideration while dealing with an application for amendment of the pleadings.

The last submission made by counsel is that in view of pleadings already raised in the plaint, nothing is missing with regard to readiness and willingness of the respondents to perform their part of the agreement but in order to do away any technical objection at later stage of the litigation, the respondents filed the application seeking amendment to specifically aver with regard to readiness and willingness to perform their part of the agreement. According to counsel, the proposed amendment neither would change nature of the suit nor would introduce a fresh cause of action, therefore, there is no question of the petitioners suffering any injury which cannot be remedied by costs.

I have heard counsel for the parties, perused the paper book particularly the various annexures appended with the petition.

Hon'ble the Apex Court in **Revajeetu Builders and**

Developers' case (supra) culled out certain principles in paras 67 and 68, reads thus:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

Be that as it may, there is no dispute between the parties that an agreement to sell dated 1.4.2010 was executed by the petitioners in favour of respondents for sale of the suit property for a consideration of Rs. 5,80,000/- and sale deed was agreed to be

executed by 31.7.2010 after receiving the balance sale consideration, at the expense of the purchaser. The respondents/plaintiffs in paras 4 and 5 of the plaint have raised specific averments as to how total sale consideration of Rs. 5,80,000/- was paid by the respondents to the petitioners/vendors. In para 6, they have raised allegations that the defendants and Kuldip Singh respondent on behalf of the purchaser was present in the tehsil complex Hoshiarpur on 29.7.2010, stamp papers were purchased with the money given by the plaintiffs to the defendants, sale deed was scribed by the deed writer at the instance of the petitioners/defendants, the same was duly signed by the petitioners/defendants but later the petitioners left the seat of deed writer and did not return to get the sale deed registered. They have also averred that site plan of the suit property was got prepared, signed by the petitioners/defendants and Kuldip Singh and the same was attached with the sale deed. The respondents/plaintiffs have prayed for relief of mandatory injunction directing the petitioners/defendants to complete the sale deed dated 29.7.2010 but in the alternative, relief for specific performance of the agreement of sale or for refund of amount of Rs. 5,80,000/- alongwith interest has been prayed for.

A careful reading of stand of the respondents/plaintiffs in the original plaint goes to show that as per their pleadings, they have already performed their part of the agreement and accepted to meet

expenses of registration of the sale deed. Under the circumstances, I find merit in contentions of the respondents that the proposed amendment was sought to be made just to do away any technical objection at later stage of the litigation that the respondents have not pleaded ingredients of Section 16(c) of the Act in so many words. Contention of the respondents that the proposed amendment would neither change nature of the suit nor would introduce a fresh cause of action appears to be meritorious.

Counsel for the petitioners has laid much stress on judgment of Hon'ble the Supreme Court of India **J.Samuel and others' case (supra)** in support of their contention that the proposed amendment cannot be allowed or the same is hit by proviso appended to Rule 17 of Order 6 CPC. In the referred case, the application for amendment of the plaint was dismissed by the II Additional District Judge, Karimnagar at Jagtial but the order passed by the trial court was reversed by the High Court. In para 7 of the judgment, the Supreme Court has noticed that the defendants filed written arguments on 22.9.2010 wherein the inherent defect of plaintiffs i.e. absence of averments of mandatory requirements of Section 16 (c) Explanation (ii) and Form 47 appendix A CPC was pointed out. Even after this, further argument was made by both the parties and counsel for the plaintiffs informed the court that no further time is required and the matter may be posted for judgment. In view of the same, the learned

trial Judge posted the matter for 4.10.2010 for judgment. Only at this juncture i.e. on 24.9.2010, plaintiffs came up with the application seeking amendment to incorporate specific pleadings in compliance with Section 16(c) of the Act and Form 47 of Appendix A CPC on the ground that the same was missed due to typographical mistake in spite of due diligence. Hon'ble the Apex Court refused to accept plea of the plaintiffs that omission is due to typographical mistake with the observations that had the person who prepared, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.

As has been noticed hereinbefore, in the case at hand, application for amendment has been filed at the stage when the case is pending for adducing evidence in rebuttal, if any, and arguments meaning thereby that the arguments are yet to be advanced by the parties. This apart, the respondents/plaintiffs have already pleaded that they have already paid the entire sale consideration and money for purchase of stamp papers, therefore, in the given circumstances, the

respondents are required to meet expenses on registration of the sale deed.

Counsel for the petitioners has made a submission that the petitioners dispute payment of Rs. 1,80,000/- referred to in para 5 of the plaint. The factual controversy between the parties would be adjudicated upon by the trial court on the basis of evidence available on record and the same can not constitute a ground to deny amendment.

The plea of the respondents/plaintiffs is that due to inadvertence and negligence, requirements of Section 16(c) of the Act could not be pleaded in the original plaint. However, counsel for the respondents has fairly informed that the respondents do not intend to adduce any evidence to prove the facts sought to be added by way of amendment. Taking into consideration pleadings in the original plaint, stage of the suit coupled with the factum that technical considerations should not be allowed to stand in the way of substantial justice when examined in the light of principles culled out by Hon'ble the Supreme Court of India in **Revajeetu Builders and Developers' case (supra)**, I find myself unable to be persuaded with the submissions made by counsel for the petitioners that the trial court has committed an error much less illegality by allowing the application for amendment. I would hasten to add that in **Abdul Rehman and another's case (supra)**, Hon'ble the Supreme Court of India after taking note of the proviso appended to Rule 17 of Order 6 CPC and judgment in

J.Samuel and another's case (supra) has concluded in para 8, reads thus:-

“8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others v. Gattu Mahesh and others*, 2012 (1) Recent Apex Judgments (R.A.J) 226: 2012(1) R.C.R. (Civil) 903 : (2012) 2 SCC 300 and

Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and others, 2012(2) Recent Apex Judgments (R.A.J.) 318: 2012(2) R.C.R. (Civil) 739: (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

Further it has been held in para 15 that all amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in nature of relief claimed shall not be considered as change in nature of the suit and the power of amendment should be exercised in the larger interest of doing full and complete justice between the parties.

Counsel for the petitioners has failed to advance any meaningful arguments that in case the proposed amendment is allowed, it would cause prejudice to the petitioners which cannot be compensated adequately in terms of money or the application for amendment is mala fide. The proposed amendment would not constitutionally or fundamentally change the nature and character of the case nor would introduce any fresh claim which would be barred by limitation on the date of application. That being so, when the factual matrix as demonstrated by counsel for the parties is examined in the light of various principles laid down by Hon'ble the Supreme Court of India in **Revajeetu Builders and Developers' case (supra)**, the Court is satisfied that the respondents have made out a case for

amendment and by allowing the same, the petitioners are in no way prejudiced and they are entitled to file additional written statement in case so desired.

Before parting with this order, it is pertinent to note that the trial court has allowed amendment of the plaint on payment of costs of Rs. 500/-. Hon'ble the Supreme Court of India in **Revajeetu Builders and Developers' case (supra)** has laid down the parameters to be taken into consideration while imposing costs. A relevant extract from para 65 reads as follows:-

“The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

- (i) At what stage the amendment was sought?
- (ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;
- (iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.
- (iv) The imposition of costs should not be symbolic but realistic;
- (v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.
- (vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.”

In the present case, the amendment has been sought at the stage when the case is fixed for rebuttal and arguments. The costs imposed by the trial court appears to be symbolic and not realistic. In view of the above, order passed by the trial court imposing costs of Rs. 500/- is modified to the extent that the respondents shall be liable to pay costs of Rs. 10,000/-.

For the foregoing reasons, the petition stands disposed of with modification in the aforesaid terms. It is clarified that any observations made hereinbefore would be confined to disposal of the present petition and would not cause prejudice to either of the parties at the time of disposal of suit on merits.

(Rekha Mittal)
Judge

11.8.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No