

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

301

CR-758-2017

Date of Decision:27.07.2017

Lali Devi and another

.....Petitioners

Versus

DHBVN and others

.....Respondents

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

Present: Mr.K.S.Dhanora, Advocate,
for the petitioners.

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

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned order dated 12.01.2017 (Annexure P-6), whereby their application under Order 6 Rule 17 of the Code of Civil Procedure (for short “the CPC”), seeking amendment in the plaint was dismissed by the learned trial court, plaintiffs have approached this Court by way of instant revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

Peculiar facts and circumstances of the case would show that husband of petitioner No.1 is missing for the last more than ten years. His whereabouts are still not known. After waiting for quite some time,

petitioners filed the suit for declaration to the effect that plaintiff No.1 was

legally wedded wife, whereas plaintiff No.2 is legitimate son of Shri Shankar Lal. When the suit was at the stage of defendants' evidence, an application under Order 6 Rule 17 CPC was moved seeking amendment in the plaint, with a view to incorporate the averment about an office order No.190 dated 11.06.2009 regarding compulsory retirement of Shri Shankar Lal. The ground for seeking amendment was that said fact came to the knowledge of the plaintiffs at a later point of time.

However, the learned trial court failed to appreciate the abovesaid factual aspect of the matter, while passing the impugned order, dismissing the application for amendment of the plaintiffs, thereby causing a manifest injustice to them. Having said that, this Court feels no hesitation to conclude that the learned trial court fell in serious error of law, while passing the impugned order and the same cannot be sustained. Plaintiffs were not going to gain anything in delaying the matter. The amendment sought in the plaint was a bonafide one. Further, the defendants were not going to be taken by surprise as the order dated 11.06.2009 was part of their own official record. No prejudice of any kind whatsoever is going to be caused to the defendants by allowing the amendment in the plaint.

No doubt, plaintiffs ought to have been more vigilant in pursuing their suit. However, looking to the peculiar fact situation obtaining on record of the case in hand, proceeding on a positive, pragmatic and holistic approach, so as to do substantial justice between the parties, this Court is of the considered opinion that the plaintiffs-petitioners are entitled for amending their plaint, so as to incorporate the averment about the office order No.190 dated 11.06.2009.

It is the settled proposition of law that rules of procedure are

meant for advancing the cause of justice. It goes without saying that every case is to be examined, considered and decided in accordance with its peculiar facts and circumstances. Every court of law must make an endeavour to grant reasonable and sufficient opportunity to both the parties to the litigation to put-up their best case before the Court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted.

While following the abovesaid principle of law, the learned Court shall achieve twin objects; namely, (i) it will avoid multiplicity of litigation between the parties and (ii) the learned court would be in a much better position to do complete and substantial justice between the parties. So far as the case in hand is concerned, the learned trial court misdirected itself, while not appreciating the abovesaid principle of law at the time of passing the impugned order and the same cannot be sustained, for this reason also.

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 opinion that since the impugned order has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order dated 12.01.2017 (Annexure P-6) passed by the learned trial court, is hereby set aside. Application moved by the plaintiffs under Order 6 Rule 17 CPC, seeking amendment in the plaint would stand allowed. After permitting the plaintiffs-petitioners to file their amended plaint, the learned trial court shall proceed further with the suit, in accordance with law.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

July 27, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No