

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.798 of 2017

Date of decision: 06.02.2017

Rajinder Singh

... Petitioner

Vs.

Manjit Kaur @ Jeeto and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhishek Singla, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition, under Article 227 of the Constitution of India, at the hands of defendant No.1, is directed against the order dated 05.09.2016 passed by the learned trial Court, whereby application moved by the plaintiff Smt. Manjit Kaur-respondent No.1 under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure, seeking amendment in the plaint and impleading the vendee as defendant, was allowed.

Learned counsel for the petitioner, while placing reliance on a judgment of this Court in **Shamshad Begum Vs. Mohd. Hassan Murtaza and others, 2016 (5) RCR (Civil) 987**, submits that once the trial of the suit has already commenced, the amendment in the plaint could not have been allowed by the learned trial Court at this belated stage. He also submits that plaintiff was trying to introduce another cause of action in the already filed suit, which was not permissible in law. Learned counsel for the petitioner next contended that

the plaintiff has failed to show exercise of due diligence on her part before seeking amendment in the plaint. He prays for setting aside the impugned order, by allowing the present revision petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the learned trial Court has not committed any error of law, while passing the impugned order, the same deserves to be upheld. The revision petition has been found without any merit and the same is liable to be dismissed, for the following more than one reasons.

The learned trial Court was conscious of all the material facts of the case, including that the trial had commenced and issues had been framed. However, till passing of the impugned order, no witness was examined. Thus, the trial was at the very initial stage. Although the plaintiff did not exercise due diligence, in the strict sense of the term, yet the learned trial Court thought it appropriate to allow the application for amendment, because no prejudice was likely to be caused to the defendants. Further, the learned trial Court also compensated the defendant by payment of reasonable amount of costs. Having said that, this Court feels no hesitation to conclude that learned trial Court did not exceed its jurisdiction, while passing the impugned order and the same deserves to be upheld.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Once no prejudice was likely to be caused to the defendant, the learned trial Court was well within its jurisdiction to pass the impugned order, allowing the amendment in the plaint. It was also not found

that the plaintiff was trying to introduce another cause of action. In fact, neither the nature of the suit was going to be changed nor any delay was likely to be caused. Thus, keeping in view the totality of facts and circumstances of the case, learned trial Court rightly allowed the application for amendment in the plaint, by passing the impugned order and the same deserves to be upheld, for this reason also.

Coming to the judgment relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another 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.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A

decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or

assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret

judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may

make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

During the course of hearing, learned counsel for the petitioner could not substantiate any of his arguments. As noticed hereinabove, neither the nature of suit was going to be changed nor any prejudice was likely to be caused to the defendant. On the other hand, learned trial Court rightly observed in the impugned order that if the amendment sought is not granted to the

plaintiff, she would suffer irreparable loss. Further, since the suit was at the very initial stage and evidence was yet to start, no delay was being caused in the proceedings. Defendant-petitioner was also duly compensated by payment of reasonable amount of costs. Under these circumstances, it can be safely concluded that learned trial Court committed no error of law, while passing the impugned order 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 present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

06.02.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No