

Civil Revision No.8633 of 2016 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.102

**Civil Revision No.8633 of 2016 (O&M)
DECIDED ON: April 17, 2017**

AMARJIT SINGH

..PETITIONER

VERSUS

HARJIT SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.K. Mahajan, Advocate,
for the petitioner.

Mr. Anil Chawla, Advocate,
for the respondent.

JASPAL SINGH, J.

CM No.26227-CII of 2016

Application is allowed as prayed for.

Documents (Annexures P2 to P5) are taken on record subject to
all just exceptions and be tagged at appropriate place.

CR No.8633 of 2016 (O&M)

Challenge in this revision petition is to the order dated October
13, 2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Amritsar,
whereby an application moved by the petitioner-defendant under Order VI
Rule 17 CPC for the amendment of the written statement has been
dismissed.

2. At the very outset of the arguments, it would be appropriate to

mention that though three different applications were disposed of by the learned trial court vide impugned order dated October 13, 2016 but the challenge has only been laid to the order whereby an application under Order VI Rule 17 CPC for the amendment of the written statement has been declined.

3. The contention of the learned counsel for the petitioner is that the impugned order dated October 13, 2016 suffers from material, irregularity, illegality and is violative of natural justice as well as principles of law governing the grant or decline of amendment.

4. The contention of the learned counsel for the petitioner is that the property in dispute was originally owned by Janmeja Singh father of the petitioner-defendant and grand-father of the respondent-plaintiff. During his lifetime, Janmeja Singh had executed two wills on the same date i.e. July 13, 1990. But while drafting the written statement, the fact regarding the execution of second will could not be mentioned in the written statement due to some inadvertence or oversight. Now the petitioner-defendant intends to incorporate the factum of execution of the wills in the written statement at the end of Para No.1 on merits to the following effect:-

“That the plaintiff has no share in the suit property in dispute as Janmeja Singh son of Dhir Singh who was the original owner of the property and the plaintiff claims to have inherited the share in the property from Janmeja Singh who died on 15.12.1994. He executed two wills during his lifetime while in sound disposing mind and of his own free will and on the same date i.e. 13.07.1990. In the will which was earlier executed specific Khasra number were not given and so in order to incorporate specific khasra numbers of the agricultural land which came to

the share of his two sons, immediately wrote the second will on the same date which was got registered with the office of the Sub-Registrar, Amritsar. Both the wills were duly executed by Janmeja Singh and attested by the attesting witnesses. Thus, due to these wills the plaintiff had no right to file the present suit for partition as he has not inherited any share in the suit land.”

5. The contention of the learned counsel for the petitioner is that the proposed amendment is necessary and vital for just decision of the case. The respondent-plaintiff is not going to be taken by surprise as the petitioner-defendant has already filed a suit for declaration regarding the same property on the basis of aforesaid Wills, which is pending disposal. The trial court while dismissing the application for the amendment of the written statement filed by the petitioner-defendant through the impugned order dated October 13, 2016. The trial court has observed that the suit was instituted on October 21, 2011, the petitioner-defendant appeared and filed written statement on April 10, 2012, issues were framed on November 21, 2012. The respondent-plaintiff has concluded his affirmative evidence on May 27, 2013 and then this application for amendment of written statement has been filed by the petitioner-defendant when the trial had already commenced and as such, there is no justification in allowing amendment in the written statement at the belated stage. The entire approach of the trial court in deciding the application for amendment of written statement is perverse and the impugned order suffers from material, irregularity and illegality in exercise of jurisdiction and therefore it can't be sustained. But it is not an absolute bar amendment after the commencement of the trial can be allowed. The procedural law is handmaid of the administration of

justice, meant to advance its cause, than to frustrate the same. In the instant case, the proposed amendment if allowed does not lead to cause any prejudice to the respondent-plaintiff. Rather, it would advance the cause of justice and would be helpful in settling the matter in controversy more effectively and judiciously. To fortify his aforesaid contention, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court rendered in case "*Ramesh Kumar Agarwal vs. Rajmala Export Pvt. Ltd., 2012 (2) Civil Court Cases 292*". The para No.11 which reads as under:

"11. It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations."

6. In the case in hand, the learned trial court has adopted a hyper technical approach instead of taking a liberal view. In fact, the trial court should have adopted the liberal view in view of the judgment of the Hon'ble Supreme Court delivered in case "*Usha Balashaheb Swami & others vs. Kiran Appaso Swami & others, 2007 (2) R.C.R. (Civil) 830*" in which it was laid down as under:

"20. Such being the settled law, we must hold that in the case of

amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as a question of prejudice would be far less in the former than in the latter case.....”

7. At the same time, learned counsel for the petitioner has further contended that in case “*Mahila Ramkali Devi and others vs. Nandram (D) through LRs and others 2015 (5) RCR (Civil) 562*” has been laid down 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. In case “*Surender Kumar Sharma vs. Makhan Singh 2009 (4) R.C.R. (Civil) 597*, the three Judges Bench of the Hon'ble Apex Court has laid down that the belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, the amendment is necessary, it can be allowed on payment of costs. Again in case “*Abdul Rehman and another vs. Mohd. Ruldu and others, 2012 (4) R.C.R. (Civil) 481*, the Hon'ble Apex Court had laid down that power to allow amendment is wide and can be exercised at any stage of proceedings in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation. All the amendments which are necessary for the purpose of determining the real controversy between the parties should be allowed, if it does not change the nature of suit.

8. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since the amendment of the written statement is necessary for the proper and effective adjudication of the matter in controversy, it deserves to be allowed especially when the other parties is

not going to be cause any prejudice or suffer any loss. It would also enable the court to pronounce judgment. Since the impugned order suffers from material irregularity, illegality and is liable to be set aside by way of acceptance of instant revision petition. Consequently, the application for amendment deserves to be accepted.

9. Per contra while controverting the various submissions made by learned counsel for the petitioner and supporting the order dated October 13, 2016 passed by the trial court, it has been urged by the learned counsel for the respondent that prior to the amendment of the written statement by way of Civil Procedure Code (Amendment) Act, 2002, the law pertaining to the amendment of the pleadings was liberal but a rider has been imposed upon the discretion of the court while dealing with the application for the amendment of the pleadings by way of making an addition of the proviso to Order VI Rule 17 CPC. The proviso appended to Order VI Rule 17 CPC is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore 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 trial. In the instant case, firstly, an application for the amendment of the written statement has been filed at a belated stage that after the conclusion of the evidence by both the parties i.e. after the commencement of the trial. The petitioner-defendant has failed to prove the condition precedent for allowing the application for amendment of written statement. The impugned order is absolutely in consonance with the settled proposition of law pertaining to the amendment of pleadings and does not suffer from illegality or

irregularity. The instant revision petition being devoid of merit is liable to be dismissed.

10. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties and scrutinizing the impugned order and going through the authoritative judgments relied upon by the parties, this court is of the considered view that the impugned order is absolutely in consonance with the legal proposition pertaining to the amendment of the pleadings especially in the circumstances that the petitioner-defendant has miserably failed to establish the pre-conditions provided in proviso to Order VI Rule 17 CPC to allow the amendment of the written statement. In case “*J. Samuel vs. Gattu Mahesh (SC) Law Finder Doc. ID #335241, 2012(1) R.C.R. (Civil) 903*” the Hon’ble Apex Court while dealing with the application under Order VI Rule 17 CPC held as under:-

“12) The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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 trial.

13) Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

15) In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

16) The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, 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. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. [vide [Aniglase Yohannan vs. Ramlatha and Others](#), (2005) 7 SCC 534, [Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others](#), [Chander Kanta Bansal vs. Rajinder Singh Anand](#), (2008) 5 SCC 117, [Rajkumar Guraward \(dead\) through LRS. vs. S.K.Sarwagi and Company Private Limited and Another](#), (2008) 14 SCC 364, [Vidyabai and Others vs. Padmalatha and Another](#), (2009) 2 SCC 409, [Man Kaur \(dead\) By LRS vs. Hartar Singh Sangha](#), (2010) 10 SCC 512.

11. A glance at the aforesaid judgment transpires that after the amendment of the Order VI Rule 17 CPC and addition of proviso by way of Civil Procedure Code (Amendment) Act, 2002, it is imperative for the party claiming amendment of pleadings to establish the condition precedent before an application is allowed. In the case in hand, the petitioner has failed to establish the same. Learned trial court has rightly concluded that no case is made out for allowing the proposed amendment and has rightly

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dismissed the application. Nothing has been argued so far as the other applications which have been disposed of vide impugned order dated October 13, 2016.

12. In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned order dated October 13, 2016 is upheld. However, the parties are left to bear their own request.

13. No order as to costs.

April 17, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No