

In the High Court of Punjab and Haryana at Chandigarh

Reserved on: December 04, 2017

Date of Decision: December 12, 2017

1. *C.W.P. No. 25042 of 2017*

M/s Rose Wood Project Pvt. Ltd. ... *Petitioner*

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... *Respondents*

2. *C.W.P. No. 25043 of 2017*

M/s Rose Wood Project Pvt. Ltd. ... *Petitioner*

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... *Respondents*

3. *C.W.P. No. 25044 of 2017*

M/s Rose Wood Project Pvt. Ltd. ... *Petitioner*

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... *Respondents*

4. *C.W.P. No. 25045 of 2017*

M/s Rose Wood Project Pvt. Ltd. ... *Petitioner*

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... *Respondents*

5. *C.W.P. No. 25046 of 2017*

M/s Rose Wood Project Pvt. Ltd. ... *Petitioner*

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... Respondents

6. *C.W.P. No. 25047 of 2017*

M/s Rose Wood Project Pvt. Ltd.

... Petitioner

Versus

Presiding Officer, Labour Court-I, Faridabad & another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sudhir Kumar Ojha, Advocate,
for the petitioner.

P.B. Bajanthri, J.

1. By this common order, all six afore-mentioned civil writ petitions i.e. CWP Nos. 25042 to 25047 of 2017 are being decided together as similar facts are involved in these petitions. However, for brevity, facts have been taken from CWP No. 25042 of 2017.

2. In all the six afore-mentioned writ petitions, petitioner has questioned the validity of Labour Court's order dated 01.09.2017 passed in application under Order VI Rule 17 read with Section 151 CPC for amendment of written statement.

3. Respondent No.2 – workman's services have been terminated on 07.10.2015. He had raised a demand notice. Consequently, reference was issued on 15.07.2016 in respect of respondent no.2 – workman which was a subject matter before the Labour Court.

4. The dates and events relating to filing of written statement

and application for amendment of written statement are that petitioner – M/s Rose Wood Project Pvt. Ltd. filed written statement before the Labour Court on 26.08.2016 and application for amendment of written statement was filed on 05.04.2017. In the meanwhile, evidence of workman was concluded and in the evidence of management, one witness had appeared in the witness box whose examination-in-chief by way of affidavit was recorded. At this juncture, petitioner-management filed an application for amendment of written statement on 05.04.2017. The Labour Court considered the petitioner's application for amendment of written statement read with order VI Rule 17 and rejected application on the score that evidence of the workman was concluded and in the evidence of management one witness had appeared in the witness box whose examination-in-chief by way of affidavit was recorded. Hence, present petition.

5. Learned counsel for the petitioner submitted that seeking amendment in written statement, material change is not forthcoming. Therefore, Labour Court rejecting application for amendment of written statement is not in accordance with Order VI Rule 17 CPC. In support of petitioner's claim, he relied on decision reported in **2016(1) PLR 719 – Sarabjit Kaur vs. Joginder Singh Bamra and others** and **2012 AIR (SCW) 5419 – Abdul Rehman and another vs. Mohd. Ruldu and others**. Both the cited decisions are in support of contention of the petitioner that application for amendment of written statement does not change the basic nature of the case. Even in the present case if the application for amendment of written statement is allowed, there will be no change of

basic nature of the case.

6. Heard learned counsel for the petitioner.

7. Question for consideration in the present petition is whether once the trial has commenced, Court can entertain application for amendment of pleadings/written statement or not?

8. Order VI Rule 17 CPC reads as under:-

*“17. **Amendment of pleadings** – The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

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 trial.”

Proviso to Order VI, Rule 17 – Amendment of pleadings, is crystal clear that no application for amendment is permissible once the trial has commenced. Proviso mandates that no application for amendment shall be allowed after the trial has commenced. In the present case, undisputed facts are that in the intervening period from the date of filing written statement on 26.08.2016 and seeking amendment in written statement on 05.04.2017, trial was commenced to the extent of recording of evidence of workman and it was concluded and in the evidence of management, one witness had appeared in the witness box whose examination-in-chief by way of affidavit was recorded. Therefore proviso to Order VI Rule 17

CPC would come in the way of entertaining application for amendment of written statement on 05.04.2017 to the petitioner, thus, Labour Court rightly rejected the petitioner's application for amendment of written statement on 01.09.2017.

9. Amendment of pleadings used to be one of the easiest things in the course of judicial proceedings before the amendments came to be made in CPC in the year 1999. It was felt that the provision for amendment of pleadings, namely Order IV Rule 17 was extensively abused and it was one of the tool of delay in the judicial process. Thus, Law Commission recommended for necessary amendment. The provision for amendment of pleadings was altogether deleted by Act 46 of 1999. The deletion of the provision led to widespread protests by lawyers and different legal bodies of the country and as a result the provision was once again incorporated, albeit with a rider, by Act 22 of 2002, with effect from 01.07.2002. In its amended form, Rule 17, Order VI carries a proviso which prohibits any amendment once the commencement of trial unless the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

10. Supreme Court in the case of ***Ajendraprasadji N. Pandey and another v. Swami Keshavprakeshdasji N. and others***, reported in ***(2006) 12 SCC 1***, in para no. 57 held as under:-

“57. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash vs. Nankhu & Ors. (2005) 4 SCC 480. Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as

examination-in-chief as date of commencement of trial, the matter will fall under proviso to Order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter-affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (the appellants).”

11. In view of aforesaid decision read with proviso to Order VI Rule 17, decisions cited by the petitioner do not assist in the case in hand having regard to the facts of the case cited supra read with present petition. Petitioner for entertaining application for amendment of written statement, taken the following contentions:-

- “i) Because, the ld. Labour Court wrongly interpreted the judgments passed by the Hon'ble High Court of Punjab and Haryana and ld. Apex Court and interpreted the contention of the judgments wrongly.*
- ii) Because, the correct facts has not mentioned in the written statement filed by the previous AR before the concerned Court.*
- iii) Because, as per the case of respondent No.2 the issues has not answered properly by the representative of the Management / petitioner.*
- iv) Because, the workman as a witness has not examined properly and if the application will not allow for amendment it will cause great prejudice to the petitioner.*
- v) Because, to decide the present writ on merits, it is very much necessary to re-examine of the respondent No.2 along with amendment in written statement.*

- vi) *Because, no prejudice will cause to the respondent No.2 as the present case is at the stage of evidence and the petitioner is required only one date after the amendment of written statement for the re-cross examination of the respondent No.2 and agreed to complete the case if time will frame by this Hon'ble Court and as per the direction of this Hon'ble Court.*
- vii) *Because, if the amendment seeks for written statement will not allow the respondent No.2 will take the benefit of legal mistake and will encroach the innocent petitioner because of the legal mistake, however, the petitioner is also ready to settle the issues legally before this Hon'ble High Court itself.*
- viii) *Because, if the respondent No.2 will be successful in that condition, it will also harm to the innocent working people with the organization because, in the pre-planned conspiracy, the respondent No.2 along with other five workman are contesting against the management, in that cases also the position of the Management is same and the applications for seeking amendment in written statement along with re-cross examination of the workman was also filed but the Id. Court have dismissed the entire application and dismissed the entire application in the similar conditions, hence, the present petition.”*

12. Perusal of the aforesaid contentions, it is crystal clear that if application for amendment of written statement is allowed, it will change the basic nature of the case. Moreover, proviso to Order VI Rule 17 mandates that Court not to entertain application for amendment. Therefore, it is mandatory provision and it cannot be read as directory. Hence, petitioner has not made out a case so as to interfere with the

Labour Court's order dated 01.09.2017.

13. Accordingly, all the six afore-mentioned writ petitions stand dismissed in limine.

December 12, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No