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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision:13/4/2017

+ CRP 167/2016

GABRIEL INDIA LTD. & ANR ...Petitioner

Through Mr.T.K.A.Padmanabhan, Adv.

Versus

ARVIND WALIA ...Respondent

Through Mr.Aditya Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Present Revision Petition is filed under section 115 of the Code of Civil Procedure, 1908 seeking to impugn the order dated 31.08.2016 by which an application filed by the plaintiff/respondent for amendment of the plaint has been allowed.
2. The respondent joined the services of petitioner No.1 in 1985. He rose to the rank of Managing Director and served as a Managing Director from 21.5.2008 till his retirement in May 2013. Disputes have arisen between the parties in respect of the quantum of the superannuation benefits.
3. The respondent thereafter filed a suit for declaration and mandatory injunction. In the suit he sought a decree of declaration declaring the acts of the petitioner in retaining/withholding the documents of the respondent to forestall the superannuation claim of the respondent as illegal. He sought a decree of mandatory injunction to direct the defendants/petitioner to forward the documents to defendant No.4/LIC. Other connected reliefs were also

sought. Alongwith the plaint the respondent filed an application under Order 2 Rule 2(3) CPC seeking liberty to separately sue for the relief of recovery of the entire superannuation amount.

4. The trial court vide its order dated 2.6.2016 dismissed the said application under Order 2 Rule 2(3) CPC.

5. Hence, the respondent has filed the present application under Order 6 Rule 17 CPC seeking to amend the plaint. He seeks by the application to add reliefs, namely, a decree declaring the superannuation corpus calculated by petitioner/defendants and deposited with LIC as incorrect, decree of mandatory injunction directing the defendants to deposit the differential amount of superannuation corpus of Rs.81,61,161/- and decree of money in favour of the plaintiff/respondent for correct corpus amount of Rs.2,44,83,483/- alongwith interest.

6. The trial court allowed the application noting that the plaint can be amended at any stage if it enables the court to decide the real controversy in question. It also rejected the contention of the petitioner that the relief sought is barred by limitation.

7. I have heard learned counsel for the petitioner. There is no merit in the plea of the petitioner.

8. The principles relating to amendment of pleadings are well settled. Reference may be had to the judgement of the Supreme Court in the case of ***Abdul Rehman & Arn. Vs. Mohd. Ruldu & Ors., (2012) 11 SCC 341***. The Supreme Court held as follows:-

“15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed

shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

9. Reference may also be had to the judgement of the Supreme Court in the case of *Revajeetu Builders and Developers vs. Narayanswamy and Sons and Ors.*, (2009) 10 SCC 84. The Supreme Court held as follows:-

“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 adequate 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. There 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.”

10. In the present case the amendment is sought at the initial stage. The amendment sought do not change the nature of the suit. As rightly noted by the trial court they are necessary to completely adjudicate the dispute between the parties.

11. On the plea of the petitioner that the prayer sought to be added is barred by limitation, even a time barred plea can be allowed if the facts so warrant. However, in the present case even on facts it cannot be said that the plea sought to be raised is barred by Limitation. Reference may be had to the judgment of the Supreme Court in *Pankaja and another vs. Yellappa (dead) by LRs and Others (2004) 6 SCC 415* where in paragraph 14 it was held as under:-

“14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

12. There is no merit in the present petition and the same is dismissed. Pending applications if any also stand disposed of.

JAYANT NATH, J

APRIL 13, 2017

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