

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

Civil Revision No.1031 of 2008 (O&M)

Date of decision: May 15, 2018

J.B. Engineering Co.

...Petitioner

Versus

Trident Alco-Chem Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Krishan K. Dadwal, Advocate
for the petitioner.

Mr.P.S.Dhaliwal, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner J.B. Engineering Co. has filed this revision petition against respondent Trident Alco-Chem Limited under Article 227 of the Constitution of India for setting aside the order dated 11.02.2008 passed by learned Addl. Civil Judge (Senior Division), Barnala and to allow application filed by the petitioner under Order 6 Rule 17 CPC and under Order 1 Rule 10 read with Section 151 CPC seeking permission to file amended plaint for impleading sister concern of respondent as party.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that J.B. Engineering Co. filed a suit against Trident Alco-Chem Ltd. for recovery of ₹2,57,037/- including interest. During the pendency of the suit, an application under Order 6 Rule 17 CPC was filed seeking permission to file amended plaint and for impleading Vikas Chem Drugs Ltd. (a company of Trident Group of Companies) through its Managing Director as defendant No.2. It is stated in the application that defendant company namely Trident Alco Chem Ltd. is a company of Trident Group of Companies which also has another company namely Vikas Chem Drugs Ltd. in its group, thus the said company i.e. Vikas Chem Drugs Ltd. is a sister concern of the defendant company. Both the said companies have common work place and offices and even the employees of the company work for other also and vice versa. It is further stated that though the work for fabrication of MS/SS pipeline and steel fabrication work qua which the suit amount is sought to be recovered in this suit, was allotted by the defendant company i.e. Trident Alco Chem Ltd. but the bills were got issued by the defendant company in the name of Vikas Chem Drugs Ltd. on the asking and as per instructions of defendant company. Therefore, Vikas Chem Drugs Ltd. is also a necessary party to the suit. It is also stated that now the plaintiff-petitioner has come to know that all this was done to defraud and cheat the plaintiff and to usurp the due amount. The conspiracy and fraudulent designs of the said companies have been exposed.

Notice of the application was given and defendant stated that this application is not maintainable as the period for filing the suit against proposed defendant has already elapsed. On merits, it is alleged that both

the companies are separate legal entities having a separate legal character

and rights. Employees of both the companies are separate from each other along with places of work. It is further alleged that plaintiff failed to file suit against Vikas Chem Drugs Ltd. within limitation and now, it wants to do way with said failure under the garb of said application, which is malafide and illegal.

Learned Addl. Civil Judge (Sr. Divn.), Barnala, vide impugned order dated 11.02.2008 dismissed the application by holding that to allow the proposed amendment, would be to enforce the time barred claim of plaintiff against proposed defendant No.2, thus the application cannot be allowed and is dismissed.

I have gone through the impugned order. The impugned order dated 11.02.2008 has been passed while discussing the law in detail. The suit has been filed in the year 2001 whereas the application for amendment of plaint has been filed in January 2008. The suit for recovery of amount was against Trident Alco Chem Ltd. and now the plaintiff wants to get decree against Vikas Chem Drugs Ltd. also. The suit against Vikas Chem Drugs Ltd. has become time barred as the amendment has been sought after six years of filing of the suit.

Secondly, in the original plaint, there is nothing that defendant Trident Alco Chem Ltd. has tried to commit fraud or cheating with the plaintiff. Now, the plaintiff wants to add a new case by pleading above facts. It is settled law that if the claim which the plaintiff wants by way of amendment, is time barred and if a fresh suit was filed on that claim and is time barred, then the amendment cannot be allowed. Learned Court below, while discussing all these facts, dismissed the application correctly and as

per law. Application cannot be allowed by saying that plea of limitation is

mixed plea of facts and law and to be determined only after the evidence. The amendment in the application has been filed after more than six years of filing of the suit, which, on the face of it, is time barred.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 11.02.2008 passed by learned Addl. Civil Judge (Sr. Divn.), Barnala, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 15, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No