

Civil Revision No.1411 of 2018 (O&M)

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

Civil Revision No.1411 of 2018 (O&M)
Date of decision: 01.03.2018

M/s ACC Limited

.....Petitioner

versus

M/s Kamal Tyre & Building Material Suppliers

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sumeet Goel, Advocate, and
Mr. Satvinder Singh, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India, defendant has laid challenge to order dated 22.01.2018 of the trial Court allowing the amendment of title of the suit by respondent-plaintiff.

Put pithily, respondent-plaintiff filed a suit for recovery of ₹28,50,541/- against the petitioner by affixation of *ad valorem* court fee of stamp of ₹1,18,500/-. From the pleadings of the petitioner-defendant, it transpired to the respondent-plaintiff that correct name of the petitioner was “M/s Associated Cement Companies Ltd.”, which amalgamated into “M/s ACC Limited”. Therefore, respondent-plaintiff moved an application for making necessary correct qua name of the petitioner and nothing else.

After hearing both the sides, trial Court vide impugned order permitted the respondent-plaintiff to correct the name of the petitioner-defendant in the title of the suit.

Learned counsel for the petitioner relying upon the judgments

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in *K. Raheja Constructions Ltd. v. Alliance Ministries*, 1995 AIR 1768, *Prithi Pal Singh and another v. Amrik Singh and others* 2013(9) SCC 576, *Sampath Kumar v. Ayyakannu and another*, 2002(4) R.C.R.(Civil) 566, *Shiv Gopal Sah @ Shiv Gopal Sahu v. Sita Ram Saraugi and others*, 2007(2) R.C.R.(Civil) 679 and *Sunil and others v. Jai Prakash and another* in Civil Revision No.3147 of 2012, decided on 02.11.2012 *inter alia* contends that the respondent-plaintiff had filed the suit in the year 2008, but moved the application for correction in the name of the petitioner-defendant at a very belated stage in the year 2017, which ought not to have been allowed by the trial court appreciating the fact that cause of action of the respondent-plaintiff against the petitioner-defendant had become time-barred. The trial Court also failed to appreciate that application for correction of the name of the petitioner was moved by the respondent at extremely belated stage to fill up lacuna causing great prejudice to the petitioner. In case, respondent-plaintiff would have exercised due diligence, in that eventuality, could move such application for correction in the name of the petitioner much earlier in time.

Having given considerable thought to the submissions made by learned counsel for the petitioner, I find the instant revision completely devoid of any merit for the reasons to follow.

Respondent-plaintiff has not claimed any change in his relief. His simpliciter suit is for recovery of certain amount against the petitioner upon which he has paid *ad valorem* court fee at the initial stage. Even from the proposed correct of the name of the petitioner, allowed by the trial Court, nature of the suit has not been changed. Therefore, no prejudice is being caused to the petitioner.

At the time of filing of the suit, there was mis-description of the

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name of the petitioner, which may be a typographical mistake also. The trial Court has specifically observed that the petitioner-defendant has raised a self-contradictory plea inasmuch as it has alleged that suit of the respondent-plaintiff is against a non-entity, whereas at the same time, it is appearing on behalf of the alleged non-entity.

For ready reference, relevant observations of the trial Court are reproduced herein under:

“14. The contention of the defendant is not that it has been wrongly impleaded and some other company had transactions with the plaintiff. The defendant admits that it is the firm with which the plaintiff had transaction. In such a case even if the plaintiff has wrongly spelled the name of the defendant firm and now wants to get the same corrected, even at a belated stage of evidence of the defendant, such an amendment would not cause any prejudice to the defendant. The same does not cause any change in the nature of the suit. It is simply an effort to correct the nomenclature of the parties. The defendant has raised a self contradictory plea by alleging that the suit has been filed against a non-entity and at the same time the defendant has been appearing on behalf of the said nonentity and has been strongly contesting the suit. In fact the name of the defendant has kept on changing on account of amalgamation of business and the defendant cannot be allowed to outsmart the course of justice by raising a contention that at present the name of the company is different or there was a spelling mistake in the name. If A company merges into B Company, then both cannot be said to be separate legal entities. If the plaintiff has wrongly named all the 3 Companies as defendant, the defendant should be honest enough to point out the correct name. But even at this stage the defendant is trying to play hide and seek, which is not permissible in the Court of Law.

15. The change in title of the suit where the parties are

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essentially the same and only nomenclature is different would not cause any prejudice to the rights of the parties and would assist in correct identification of the parties. Also, the same would not change the nature of the suit, in any manner, as held in Hanif's case (supra). Also, the same would not prejudice the rights of the defendant as held in Baljeet's case (supra). Hence, the amendment deserves to be allowed. Also, as held in M/s Marble Art's case (supra) relied upon by the defendant, the amendment deserves to be allowed as it does not injustice to the defendant and is necessary for the purpose of determining the real question in controversy between the parties. The test of due diligence as held in Sunil's case (supra) and Ajmer's case (supra), relied upon by the defendant, is not applicable in the present case, as the defendant is bent upon, not to clarify the correct nomenclature with which it should be impleaded.

16. For the reasons recorded above, the amendment in the title deserves to be allowed. The same is hereby allowed.”

Application of the respondent-plaintiff though was filed at a belated stage, but the same by in itself does not give any legal right to the petitioner to object it, more particularly, when the same would help the Court in effective adjudication of the real controversy between the parties. As far as argument of the learned counsel for the petitioner qua point of limitation is concerned, the same has also no force for the simple reason that no new relief being time-barred has been claimed by the respondent-plaintiff, rather simple correction in the name of the petitioner was sought.

Facts and circumstances of the judgments, referred to above, relied upon by learned counsel for the petitioner are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

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the trial Court and find no illegality or perversity in the same. Hence, the petition is dismissed.

March 01, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.