

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1575 of 2018(O&M)
Date of Decision-14.08.2018

M/s Freezeland Refrigeration Corp. and another

... Petitioners

Versus

Rakesh Verma and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Saurabh Kapoor, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 09.02.2018 passed by Civil Judge (Junior Division), Ludhiana whereby application filed by the plaintiff for amendment of plaint under Order 6 Rule 17 CPC was allowed.

[2]. Plaintiff/respondent No.1 filed a suit for possession by way of specific performance of agreement to sell dated 17.02.2004 in respect of constructed property measuring 194 sq. yards bearing Unit No.B-XIX-S-3-174 situated at Taraf Ghailewal comprising in khasra No.1044/464-676-915 and 918, khata No.296/411 as per *jamabandi* for the year 1953-54. The agreement was executed for total sale consideration of Rs.7,50,000/- which was already paid to the defendants towards full and final agreement to sell dated 17.02.2004. Vacant

possession of the property in question was delivered to the plaintiff. Plaintiff claimed himself to be owner in possession of the suit property. Permanent injunction was also sought to restrain the defendants from interfering in the peaceful possession of the plaintiff and also from alienating the suit property or creating any encumbrance over the suit property.

[3]. Plaintiff submitted that during pendency of the suit, he met with an accident on 18.08.2017 and had undergone surgery on 18.08.2017 and 19.08.2017, due to which, he could not visit the suit property. On 27.11.2017, the plaintiff came to know that the entire building of the property has been demolished and razed to the ground on account of some conspiracy by the defendants. After breaking open the locks of the property, defendants had illegally taken possession and had also stolen one bangle cutting machine, tool set diamond, 180 dyes (cutting), 2 presses, one tar patti machine, scrap, one bangle seizure machine, old machinery tools, one counter, two tables, five chairs and office shutter etc. from the property in dispute. With the aforesaid background, the plaintiff wanted to incorporate proposed amendment in the plaint in order to bring out clear picture on record.

[4]. The application was contested by the defendants.

[5]. Trial Court vide impugned order dated 09.02.2018 allowed the application.

[6]. Learned counsel for the petitioners submitted that by way of amendment, a new cause of action is sought to be added. Learned counsel referred to **M/s Revajeetu Builders and Developers Vs. M/s Narayanaswamy and Sons and others, AIR 2009 SC (Supp) 2897** and **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others, AIR 2013 Supreme Court 3188** and contended that the proposed amendment would affect the rights of the defendants adversely as a new case would be set up and the same would go against the basic principles as the proposed amendment is not proper for effective adjudication of the case, nor the same is *bona fide*. No such amendment can be allowed at such a belated stage when the trial has already commenced.

[7]. Evidently, the suit was filed for possession by way of specific performance of agreement to sell dated 17.02.2004 and also to restrain the defendants from interfering in the peaceful possession of the plaintiff and from alienating the suit property. In the written statement filed by defendants No.1 and 2, execution of agreement to sell was denied and claimed that the property is in possession of the defendants and the building has been demolished in July 2011. Written statement was filed on 28.03.2017, wherein the alleged demolition of the building was stated to be in the year 2011 and the site is claimed to be in possession of the defendants. The factum of demolition whether

took place in July 2011 or in the year 2011 would be a question of fact that will be determined with reference to evidence.

[8]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and due diligence are the considerations on which *bona fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[9]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is

that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[10]. In view of aforesaid legal position, the petitioner is entitled to incorporate subsequent events by way of proposed amendment that would facilitate the Court to decide the controversy in an effective manner. No prejudice would be caused to the defendants as alleged plea of defendants that the building was demolished in July 2011 would be determined by the trial Court with reference to evidence to be led by the parties. Since the evidence on the aforesaid fact can only be led in the presence of proper pleadings on record, both the parties would be entitled to lead their evidence on their respective contentions for appropriate decision by the Court.

[11]. In view of above, I find no error of jurisdiction in the impugned order dated 09.02.2018 passed by Civil Judge (Junior

Division), Ludhiana. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

14.08.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No