

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

CR No.4525 of 2018

Date of Decision : 03.10.2018.

M/s Bipin Rice Mills

...Petitioner

versus

Punjab State Power Corporation Ltd. and another

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for the respondents.

B.S.WALIA, J. (Oral)

1. Prayer in the revision petition is for quashing of order dated 28.05.2018 (Annexure P-1) rejecting the application filed by the petitioner for amendment of plaint.

2. Brief facts of the case leading to the filing of the revision petition are that the petitioner had filed a suit seeking a declaration that memo No.1907 dated 23.12.2015 raising demand of ₹2,57,998/- was null and void being against law and facts. Petitioner had also prayed for the issuance of a permanent injunction restraining the respondents from proceeding on the basis of the aforementioned memo and from recovering the amount mentioned therein. The aforementioned memo was challenged

on the ground that mistake in calculation in raising the demand, if any, was by the officials of the respondents and not by the petitioner, secondly, that no final order of assessment had been passed as per requirement of law and that checking report had not been supplied etc., therefore, demand of ₹2,57,998/- was legally unsustainable. The petitioner/plaintiff also raised plea of defective meter. During the pendency of the suit, a report was received from the respondents on 10.02.2016 to the effect that meter in question was correct. The petitioner represented against the finding recorded in the said report and sought the examination of the meter from M.E. Lab of the respondents. On examination of the meter by M.E. Lab of the respondents, report dated 01.06.2016 was received declaring the meter to be defective. On the basis of report dated 01.06.2016, account of the petitioner was overhauled by the respondents for the period December, 2014 to February, 2016 holding him entitled to a sum of ₹2,40,731/- subsequently revised to ₹4,23,614/-. Communication regarding amount payable by the respondents to the petitioner was supplied to the petitioner only at the time of examination of the witness of the respondents on 28.09.2017, whereupon, the aforementioned reports (Ex.PY and Ex.PZ) were put to the respondents' witness in cross-examination, who identified the signatures of the officials of the respondents on Ex.PY and Ex.PZ.

3. Learned counsel contends that in the aforementioned circumstances, the petitioner moved an application for amendment of the plaint on 06.11.2017 so as to incorporate plea of defective meter as based on the report issued by M.E. Lab of none else than the respondents, especially in the background that no evidence was to be led by the

petitioner in respect thereto. However, the said application was dismissed by the learned trial Court on the ground that there was delay in moving the application and secondly it would change the nature of the suit. Learned counsel contends that there was no delay in moving the application under Order 6 Rule 17 CPC, in view of the fact that the amendment was necessitated on account of subsequent events namely report dated 01.06.2016, whereby the meter of the petitioner was declared to be defective and decision as taken by the respondents was supplied to the petitioner in April and June, 2017 that money was payable by the respondents to the petitioner on account of refund for the period w.e.f. December, 2014 to February, 2017 on account of defective meter as also in view of the fact that the communication with regard to refund as was supplied to the petitioner in April and June, 2017 had been put to the witness of the respondents in cross-examination on 28.09.2017 and he had identified the signatures on Ex.PY and Ex.PZ. Learned counsel further contended that the dispute was with regard to billing in connection with a meter installed on the premises of the petitioner leading to issuance of memo No.1907 dated 23.12.2015 and if the amendment was allowed, the petitioner would be able to raise the plea of defective meter in order to substantiate that the demand raised vide memo No.1907 dated 23.12.2015 was illegal and in fact the petitioner was entitled to refund.

4. Learned counsel by relying on the decision of Hon'ble the Supreme Court in M/s Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal 2017 (5) SCC 212, contended that amendment can be allowed, where it was necessary for the proper and effective adjudication of the case and that

in the instant case the amendment was necessary in order to effectively adjudicate the lis as to whether the impugned notice vide memo No.1907 dated 23.12.2015 was legal or not. Secondly that the application for amendment was bona fide as it was based on the report of none else than the M.E. Lab of the respondents and the decision taken by the respondents' department that in view of the report of defective meter, the petitioner was entitled to refund from the department to the tune of ₹4,20,000/- approximately. Learned counsel contended that no prejudice as such would be caused to the other side as the amendment sought for was in respect of the events which were attributable to the respondents themselves and that if the amendment was not permitted to be made the same would lead to injustice and multiplicity of litigation as in that eventuality the petitioner would not be able to effectively prove that the impugned notice was legally unsustainable and further he would have to file a fresh suit for recovering the money. Lastly learned counsel contended that the nature and character of the suit would not change since the issue would remain the same i.e. whether the impugned notice and demand raised therein was legally sustainable or not.

5. Learned counsel for the respondent on the other hand has relied upon the decision of Hon'ble the Supreme Court in Vidyabai and others vs. Padamlatha and another 2009 (2) SCC 409 to contend that the amendment could not be allowed as there was absence of due diligence.

6. I have heard learned counsel for the parties and am of the view that in view of the position as noted above as also the reasons given

hereinunder, impugned order dated 28.05.2018 is liable to be set aside, revision petition allowed and petitioner permitted to make the amendment as prayed for.

7. Proviso to order VI Rule 17 CPC no doubt lays down that an application for amendment should not be allowed after the trial has commenced unless the Court has come to the conclusion that despite due diligence the party seeking the amendment could not have raise the matter before the commencement of the trial but the fact remains that in the instant case the matter under no circumstances could have been raised before the commencement of trial for the simple reason that the report of M.E. Lab of the respondents' department came into existence on 01.06.2016 i.e. much after the filing of the civil suit in which it was held that the meter of the petitioner was defective and thereafter decision was taken by the respondents which was supplied to the petitioner only in April and June, 2017 that on the basis of the meter of the petitioner having been found to be defective, the account of the petitioner had been overhauled for the period w.e.f. December, 2014 to February 2016 and in view thereof, the petitioner was entitled to refund of ₹4,23,614/-. The aforesaid communication was put to respondents' witness in cross-examination on 28.09.2017, wherein he admitted the signatures of the officials of the respondents' department on the reports. The amendment sought to be made is necessary for the proper and effective adjudication of the matter i.e. with regard to the legality of the demand raised in impugned notice vide memo No.1907 dated 23.12.2015. By no stretch of imagination, the amendment sought to be made can be said to be lacking bonafide as it is based on

subsequent events which are attributable to none else than the respondents. Therefore, no prejudice as such would be caused to the respondents, rather refusing amendment in the instant case would lead to injustice and multiplicity of litigation. The proposed amendment does not change the nature and character of the suit as also the basic issue which pertains to the validity of the impugned notice and in case the amendment is not allowed, then in that eventuality, the petitioner would be handicapped in proving that the demand raised vide the impugned notice is legally unsustainable as is evident from the report of M.E. Lab as also to get refund for the period w.e.f. December, 2014 to February, 2016. In the circumstances, I am of the view that amendment is necessary for the proper and effective adjudication of the dispute.

8. In the light of the position as noted above, order dated 28.05.2018, passed by the learned trial Court is set aside, revision petition allowed. The petitioner is permitted to make the amendment as prayed for. Trial Court to proceed in the matter in accordance with law.

(B.S.WALIA)
JUDGE

03.10.2018

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No