

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

**Civil Revision No.4649 of 2017
Date of Decision: 02.08.2018**

Hardip Singh

.....Petitioner

Vs

Beant Singh and others

....Respondents

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

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. S.K. Rattan, Advocate
for respondents No.1 and 2.

Mr. Arun Kaundal, D.A.G., Punjab
for respondents No.5 to 7.

Mr. Amit Kumar, Advocate
for respondent No.9.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 27.03.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana vide which the application under Order 6 Rule 17 CPC filed by the petitioner for amendment of the plaint was dismissed.

[2]. Brief facts of the case are that the plaintiff filed a suit

for permanent injunction and mandatory injunction for restraining the defendants No.4 to 11 from paying the amount of compensation to defendants No.1 to 3 and further restraining defendants No.1 to 3 from claiming payment of compensation from defendants No.4 to 11.

[3]. Learned counsel for the petitioner submitted that at the stage of consideration for amendment of the suit, only *bona fide* nature of the amendment is to be seen without commenting upon the ultimate merits of the case. The applicant/plaintiff pleaded in the application that defendant No.1 by conspiring with the government officials i.e. defendants No.10 and 11 has managed to execute and get registered the sale deed of the property in question in their favour wilfully in order to derive wrongful gain to defendants No.10 and 11 and wrongful loss to the applicant/plaintiff during pendency of the suit.

[4]. Learned counsel further submitted that the execution of sale deed during pendency of the suit would give rise to subsequent events and as such amendment becomes inevitable. The plaintiff sought to amend the suit for incorporating the declaratory relief for challenging the sale deed dated 27.01.2016 on the basis of fraud and misrepresentation.

[5]. I have considered the submissions made by learned

counsel for the parties.

[6]. 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 bona fide amendments should be allowed in order to prevent multiplicity of litigation.

[7]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to cover all bona fide amendments at any stage of the proceedings. The basic purpose for allowing such amendment is to minimize the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed

if the same subserves the cause of justice and avoids further litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[8]. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The aforesaid principle was considered by the Hon'ble Apex Court in **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763,** while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844** and **Kailash vs. Nanhku and ors., (2005) 4 SCC 480.** The mandatory nature of the proviso of Order 6 Rule 17 CPC was explained and the amendment was allowed even after commencement of the trial with a caution that the power should not be exercised in routine manner. The primary duty of the Court is to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or not? The proviso in question has to be meticulously followed so as to find out bona fide nature of the amendment and its sufficiency to

enable the Court to decide the controversy in an effective manner.

[9]. The amendment cannot be declined solely on the ground of its being delayed. In **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530** and **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 78** the Hon'ble Apex Court has held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse the same, if the Court is satisfied that amendment will enable the Court to decide the controversy in an appropriate manner.

[10]. Evidently, the suit itself is at the preliminary stage where after filing of the replication, issues have not been framed and the trial has not commenced. It is a settled principle of law that all *bona fide* amendments are to be allowed. No prejudice is going to be caused to the defendants in case the proposed amendment is allowed for incorporating the subsequent events in the pleadings of the plaint and to make resultant prayer by incorporating declaratory relief in the suit.

[11]. For the reasons recorded hereinabove, this revision petition is allowed. The impugned order dated 27.03.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana is hereby set aside thereby allowing the application filed under Order 6 Rule 17 CPC for amendment of the plaint.

August 02, 2018

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No