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

**Civil Revision No.510 of 2017  
Date of Decision: 30.07.2018**

**Ashu Rani @ Raman Rani                    .....Petitioner**

**Vs**

**Bunty Kumar and others                    ....Respondents**

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

Present: Mr. Ishwar Lal, Advocate  
for the petitioner.

Mr. Raman Mohinder Sharma, Advocate  
for respondent No.1.

Mr. Sanjeev Soni, Advocate  
for respondent No.2.

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**RAJ MOHAN SINGH, J. (Oral)**

[1].        Petitioner has assailed the order dated 27.07.2016 passed by Addl. Civil Judge (Sr. Divn.) Patiala, vide which application under Order 6 Rule 17 CPC filed by the petitioner was dismissed.

[2].        Learned counsel for the petitioner submitted that in para no.3 of plaint, factum of death of Nand Lal was pleaded. Thereafter, respondent-Bunty started paying monthly profits to the plaintiffs. Plaintiffs further pleaded that defendant No.1 stopped giving profits of share to the plaintiffs for about 3 years,

which ultimately led to filing of the suit. Admittedly, Nand Lal and Gurditta Ram were co-tenants in shop No.3. After demise of Nand Lal, defendant No.1 along with Rama Rani, Manju Rani and Sunaina inherited the tenancy rights, but Buntty represented the cause without bringing remaining legal heirs on record. In the suit filed by the plaintiffs for declaration, permanent injunction and consequential relief of possession, all the legal heirs of deceased Nand Lal are sought to be impleaded being necessary party in order to avoid future litigation.

[3]. Learned counsel further submitted that since tenancy rights were inherited, therefore, defendant No.1 would not suffice to meet the requirement of law. The other amendments are for joint possession and giving specific dimensions to the suit property in the plaint.

[4]. On the other hand, learned counsel for respondent No.1 submitted that the amendment cannot be allowed as the trial has already progressed.

[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]. Impleadment of all the legal representatives of deceased Nand Lal, change of nature of suit from possession to joint possession and additions of dimensions of the property would not change the real controversy between the parties, rather would help the Court in deciding the *lis* in an effective manner.

[11]. For the reasons recorded hereinabove, this revision petition is allowed. The impugned dated 27.07.2016 passed by Addl. Civil Judge (Sr. Divn.) Patiala is hereby set aside. Consequent follow up action be taken.

July 30, 2018

Atik

Whether speaking/reasoned  
Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No  
Yes/No