

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

**CR No.5393 of 2018(O&M
Date of Decision: 21.08.2018**

KIRPAL SINGH AND ANOTHER

.....PETITIONERS

VERSUS

JASVIR KAUR AND OTHERS

....RESPONDENTS

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

Present:Mr. K.B. Raheja, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the order dated 19.07.2018 passed by Civil Judge (Junior Division), Malerkotla vide which application filed by plaintiff/respondent No.1 for amendment of plaint was allowed.

[2]. The amendment of plaint in terms of Order 6 Rule 17 CPC was allowed. The proposed amendment was to the effect that instead of Kartar Singh name of Gurdial Kaur wife of Kartar Singh be inserted in the pleadings.

[3]. Trial Court granted indulgence on the ground that even though the case was at the stage of rebuttal evidence, but the plaintiff would not lead any evidence on the amendment sought by her.

[4]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The merits of the case are not to be adjudged at the stage of allowing the prayer for amendment.

[5]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice between the parties. All *bona fide* amendments which are necessary for determining the real issue between the parties should be allowed. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[6]. 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.**

[7]. 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 costs.

[8]. Perusal of the impugned order would show that while granting indulgence for amendment of the plaint, the trial Court has not imposed any costs. Though there is no scope for interference in the present revision petition, however, the trial Court ought to have imposed adequate costs for granting indulgence for amendment of the plaint at the stage of rebuttal evidence.

[9]. This revision petition is dismissed. However, costs of Rs.5000/- shall be imposed on the plaintiff to be paid to the defendants before seeking indulgence in the context of amendment before the trial Court. Payment of costs shall be the condition precedent for granting any indulgence by the trial Court in the aforesaid context. If the plaintiff has any objection with regard to aforesaid imposition of costs, then liberty is granted to her to file an application for recalling of the present order.

August 21, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No