

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 118

CR-6099-2018 (O&M)

Date of decision : 05.12.2018

M/s Tractor Trolley Association

..... Petitioner

VERSUS

M/s Chandan Agro Products
Pvt. Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Abdul Shehbaz Thind, Advocate, for the petitioner.

Mr. R. S. Chugh, Advocate, for respondent No. 1.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 08.08.2018, passed by the Additional District Judge, Ludhiana (for short, the Appellate Court), through which the application filed by the petitioner under Order 6 Rule 17 CPC seeking therein to amend its grounds of appeal was dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2011 respondent No. 2-Sarabjit Singh filed a suit seeking therein to restrain one Surinder Singh from interfering in his peaceful possession of the property detailed and described in the headnote of the plaint (for short, the suit property). On being put to notice, Surinder Singh appeared before the Trial Court and not only filed a written statement but through respondent No. 1-M/s Chandan Agro Products Pvt. Ltd. of which he claimed to be the Managing Director, filed a counter claim against respondent No. 2-Sarabjit Singh as also M/s Bharat Tractor Trolley Union seeking therein the issuance of a direction to

respondent No. 2 and M/s Bharat Tractor Trolley Union to hand over to him vacant and physical possession of the suit property. Though respondent No. 2 withdrew his suit, the Trial Court through its order dated 08.07.2016 considered and allowed the aforesaid counter claim filed by respondent No. 1-M/s Chandan Agro Products Pvt. Ltd. Resultantly, the counter claimant was held entitled to the relief of possession of the suit property. Mesne profits @ ₹30,000/- per month from the date of filing of the counter claim till the delivery of possession of the suit property were also granted. However, the grant of mesne profits was subject to furnishing of requisite Court fee and it was directed that if the Court fee was not paid within thirty days from the date of the decree, the claim regarding mesne profits would stand dismissed. The petitioner was not a party either in the suit or in the counter claim but on the ground that it was effected and prejudiced by the aforesaid judgment and decree of the Trial Court dated 08.07.2016, an appeal was filed by the petitioner to challenge therein the aforesaid decree. Notice in the appeal was issued to the respondents and while the same was pending adjudication, an application was preferred by the petitioner under Order 6 Rule 17 CPC seeking therein to amend its grounds of appeal. Such application was dismissed by the Appellate Court through the order which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

A perusal of the impugned order reveals that the application filed by the petitioner under Order 6 Rule 17 CPC seeking therein to amend its grounds of appeal was dismissed by the Appellate Court solely on the ground that the petitioner was not a party before the Trial Court.

Merits of the amendment sought as also whether such amendment falls within the purview of Order 6 Rule 17 CPC was neither considered nor discussed.

The Appellate Court has issued notice in the petitioner's appeal. The issue of maintainability of such appeal at the instance of the petitioner, who was not a party before the Trial Court is yet to be decided. Therefore, at the present stage, the Appellate Court should have considered the petitioner's application seeking amendment in the grounds of appeal on its merits especially when such application was filed soon after the petitioner had instituted its appeal to challenge therein the judgment and decree dated 08.07.2016, passed by the Trial Court.

In view of the above, the impugned order is set aside with a direction to the Appellate Court to consider and decide the application filed by the petitioner under Order 6 Rule 17 CPC on its merits which would include as to whether the sought amendment falls within the parameters laid down under Order 6 Rule 17 CPC.

It is clarified that through the present order this Court has not opined on the maintainability of the petitioner's appeal.

The present petition is allowed in the above terms.

05.12.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No