

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

Sr. No.123

C.R. No.6335 of 2018

Date of decision: 20.09.2018

Vikas Aggarwal and another

....Petitioners

versus

Manish Aggarwal

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sahil Khunger, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 09.05.2018 passed by the Civil Judge (Junior Division), Faridabad (for short – 'the Trial Court') dismissing the petitioners' application filed by them under Order 6 Rule 18 CPC for not permitting the respondent from placing on record an amended plaint. Also under challenge is the order through which the Trial Court has allowed respondent to file an amended plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein partition of the property described and detailed in the plaint (for short – the suit property). On being put to notice, the petitioners, who were the defendants in the suit appeared before the Trial court and filed their written statement denying the respondent's claim. Thereafter, the Trial Court framed issues and at the initial stage of leading his evidence, the respondent filed an application under Order 6 Rule 17 CPC seeking therein

to amend his plaint. Such application, subject to payment of Rs.5,000/- as costs, was allowed by the Trial Court on 05.05.2017 and the matter was adjourned to 19.05.2017 for payment of the awarded costs as well as for filing of the amended plaint. On 19.05.2017, neither costs were paid by the respondent nor did he file the amended plaint. On request made on his behalf, the matter was adjourned to 23.05.2017 for doing the needful. However, on 23.05.2017 also neither costs were paid nor the amended plaint was filed. The matter was then adjourned to 30.05.2017 for payment of costs as well as for filing of the amended plaint by the respondent on which date, the awarded costs were paid. On request made on behalf of learned counsel for the respondent, the Trial Court adjourned the matter to 07.07.2017 for filing of the amended plaint. However, in the meantime, the petitioners filed a revision petition before this Court being CR No.3645 of 2017 – Vikas Aggarwal and another versus Manish Aggarwal, impugning therein the aforesaid order of the Trial Court dated 05.05.2017. In the above revision petition, through order dated 31.05.2017, this Court issued notice and in the meanwhile stayed the operation of the order impugned in the petition. In view of the stay order granted by this Court, the Trial Court adjourned the suit. The aforesaid revision petition was ultimately dismissed by this Court on 09.01.2018. The next date in the suit before the Trial Court was 21.01.2018 on which date the matter was adjourned to 14.02.2018 to await the orders passed by this Court. On 14.02.2018 the petitioners filed an application before the Trial Court under Order 6 Rule 18 CPC for not permitting the respondent to bring on record his amended plaint. The application was dismissed through order dated 09.05.2018. Through a separate order of even date, the Trial Court listed the matter for 16.05.2018

for filing of the amended plaint, on which date, as permitted by the Trial Court, the respondent placed on record his amended plaint.

Learned counsel for the petitioner submits that through order dated 05.05.2017, the Trial Court permitted the respondent to amend his plaint and for that purpose adjourned the matter to 19.05.2017. According to the learned counsel, since the respondent failed to bring on record the amended plaint for about one year thereafter such amended plaint was permitted to be brought on record by the Trial Court in clear violation of Order 6 Rule 18 CPC.

Order 6 Rule 18 CPC reads as under:-

“ORDER VI

18. Failure to amend after order.- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

As per the afore-quoted provision, if a party who has obtained an order for leave to amend does not amend his pleadings within the allotted time or if no time is allotted, within fourteen days from the date of the order permitting him to make the amendment, such party shall not be permitted to bring on record such amended pleadings after the expiration of the allotted time and if there is no allotted time after fourteen days of the passing of the order unless the time is extended by the Court.

Through order dated 05.05.2017, subject to payment of

Rs.5000/- as costs, the Trial Court permitted the respondent to amend his

plaint and for that purpose, posted the matter for 19.05.2017, on which date when the needful was not done, on prayer made on behalf of the respondent, the Court adjourned the matter to 23.05.2017 to enable the respondent to pay the awarded costs as also to file his amended plaint. On 23.05.2017 also the respondent neither deposited the costs nor filed the amended plaint. The Trial court again extended the time for the respondent to do the needful and adjourned the matter to 30.05.2017 on which date costs of Rs.5000/- were paid by the respondent and again accepting the request made on behalf of the respondent, the Trial Court adjourned the matter for filing of his amended plaint to 07.07.2017. Thus granting another extension for the said purpose. Before the matter could be taken up on 07.07.2017, the petitioners knocked the doors of this Court through CR No.3645 of 2017 – Vikas Aggarwal and another versus Manish Aggarwal, assailing therein the aforesaid order dated 05.05.2017. This Court issued notice and granted interim stay. Such petition filed by the petitioners was ultimately dismissed by this Court on 09.01.2018 and since the order dated 05.05.2017 passed by the Trial Court through which it had permitted the respondent to amend his plaint was under challenge before this Court in which interim stay had also been granted, during the pendency of such revision petition the Trial Court adjourned the matter to await the final orders to be passed by this Court. After this Court dismissed the aforesaid revision petition, the matter was listed before the Trial Court on 22.01.2018 on which date, since the order dated 09.01.2018 passed by this Court in the aforesaid revision petition was not available, the Trial Court adjourned the matter to 14.02.2018. However, before any further proceedings could take place, the petitioners filed an application under Order 6 Rule 18 CPC for not permitting the respondent to

bring on record his amended plaint. After issuing notice of the application, the Trial Court dismissed the same through its order dated 09.05.2018. Immediately thereafter, i.e. on 16.05.2018, the respondent filed his amended plaint which was permitted to be taken on record by the Trial Court.

From the above narration of facts it is abundantly clear that on 05.05.2017, subject to payment of costs, the Trial Court permitted the respondent to file his amended plaint. Thereafter, for doing the needful, the Trial Court granted extensions till 07.07.2017. In the meanwhile, the petitioners challenged the aforesaid order dated 05.05.2017 through a revision petition filed before this Court. Since this Court was seized of the matter and had also granted interim stay, the Trial Court rightly adjourned the matter from time to time to await further orders from this Court and thus during such period, the respondent was precluded from filing his amended plaint for no fault on his part. This Court dismissed the petitioners' revision petition on 09.01.2018. However, prior thereto, the Trial Court had already adjourned the date of hearing in the suit to 21.01.2018. Since by 21.01.2018, a copy of the order passed by this Court was not available, the hearing in the suit was adjourned to 14.02.2018. During this period also neither any delay is found on the part of the respondent in the filing of his amended plaint nor any fault with the procedure adopted by the Trial Court for adjourning the matter to await the orders of this Court. From 14.02.2018 till 09.05.2018, the petitioners' application under Order 6 Rule 18 CPC for not permitting the respondent to bring on record his amended plaint was pending before the Trial Court and thus, it would have been a contradiction in terms if during the pendency thereof the Trial Court would have been permitted the respondent to bring on record his amended plaint. The

application filed by the petitioners under Order 6 Rule 18 CPC was dismissed on 09.05.2018 and on 16.05.2018, the respondent filed his amended plaint.

In the above facts which speak for themselves, no error is found with the order passed by the Trial Court permitting the respondent to bring on record his amended plaint. Initially, the Trial Court granted extensions to the respondent to do the needful which extensions were never challenged by the petitioners. Later, the issue as to whether the respondent should be allowed to bring on record his amended plaint was sub-judice firstly before this Court, in which there was interim stay and then before the Trial Court. The Trial Court rightly awaited for such litigation to come to an end before permitting the respondent to bring on record his amended plaint. For the above period, respondent was precluded from filing his amended plaint without any fault on his part. Thus, no error is found in the order of the Trial Court permitting the respondent to file his amended plaint by earlier expressly then impliedly granting extensions to the respondent for doing the needful.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 20, 2018

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