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

1. **Civil Revision No.6646 of 2017 (O&M)**
Date of Decision: 06.08.2018

Balwinder SinghPetitioner
Vs
Patiala Improvement Trust and othersRespondents

2. **Civil Revision No.7726 of 2017 (O&M)**

Iqbal SinghPetitioner
Vs
Patiala Improvement Trust and othersRespondents

3. **Civil Revision No.7727 of 2017 (O&M)**

Kiran KumariPetitioner
Vs
Patiala Improvement Trust and othersRespondents

4. **Civil Revision No.7747 of 2017 (O&M)**

Hitesh SapraPetitioner
Vs
Patiala Improvement Trust and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Varun Garg, Advocate
for the petitioner(s).

Mr. M.L. Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Vide this common order Civil Revision Nos.6646, 7726,
7727 and 7747 of 2017 (O&M) are being decided. Since similar

issue is involved in all the petitions, therefore, for brevity common facts are being culled out from CR No.6646 of 2017 (O&M).

[2]. Petitioner has assailed the order dated 13.07.2017 passed by the Civil Judge (Jr. Divn.) Patiala vide which application for amendment of the plaint under Order 6 Rule 17 CPC was dismissed.

[3]. Brief facts of the case are that the plaintiff filed a suit for mandatory injunction directing the defendants to receive due amount of allotment of M.I.G. Flat No.5-B, Block-B, Shaheed Sewa Singh Thikriwala Nagar, Patiala which was allotted to the petitioner on 07.05.2010. Injunction was also sought restraining the defendants from cancelling the allotment. The suit was filed on 26.07.2013. During pendency of the suit, letter memo dated 26.08.2016 issued by the Government of Punjab came into being condoning the delay for deposit of 1/4th amount in pursuance of application of the petitioner dated 05.10.2010.

[4]. The Addl. Civil Judge (Sr. Divn.) Patiala passed an order dated 21.10.2016 whereby statement of the petitioner was recorded that he is ready to pay the amount of Rs.18,24,000/- including 3% surcharge. The readiness of the petitioner was recorded and thereafter direction was issued to the plaintiff/petitioner to deposit the amount through cheque in

favour of the defendants. At the same time, the defendants were also directed to receive the amount as per Rules on or before 02.11.2016.

[5]. On 01.11.2016, the petitioner visited the office of respondents with the requisite amount, but the same was not allowed to be deposited, rather the defendants made escalated demand in a sum of Rs.28,81,578/-.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. The application for making amendment of the plaint was made on the ground that earlier a memo dated 07.05.2010 stood merged in the memo dated 26.08.2016 vide which the Government of Punjab condoned the delay for depositing the amount to the tune of 1/4th in pursuance of the application of the petitioner. The proposed amendment thereby seeking incorporation of plea of declaration on the basis of subsequent events, whether would be time barred or not is the subject matter to be taken care of by the trial Court at the relevant stage.

[8]. At this stage, in my considered opinion the proposed amendment cannot be held to be *mala fide*. The amendment in the pleadings is to be liberally construed so as to consider the real controversy between the parties. Proviso to the rule to

some extent curtails absolute discretion of the Court, however knowledge and due diligence are the consideration 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.**

[9]. 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 cost.

[10]. For the reasons recorded hereinabove, all the revision petitions are allowed. The impugned order dated 13.07.2017 passed by the Civil Judge (Jr. Divn.) Patiala is hereby set aside. The applications for amendment of the plaint under Order 6 Rule 17 CPC are allowed, however subject to payment of Rs.10,000/- as costs in each case, to be paid to the respondents/defendants.

[11]. The payment of costs shall be the condition precedent for allowing the indulgence by the trial Court in the aforesaid context.

August 06, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No