

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

**(111)**

**CR-6772-2018**

**Date of Decision: October 11, 2018.**

**Navjot Singh**

**.... Petitioner**

**Versus**

**Satwinderpal Singh (deceased) Through His Legal Heirs**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Ankit Kharbanda, Advocate, for the petitioner.

Mr. Umesh Aggarwal, Advocate, for the caveators/respondents.

**SUDIP AHLUWALIA, J (ORAL)**

1) This revision petition is directed against the order dated 30.07.2018 passed by Ld. Civil Judge (Jr. Division), Amritsar in CS No.1178 of 2016.

2) Vide the impugned order, the application of the petitioner-plaintiff for amendment of the original plaint under Order 6 Rule 17 CPC was dismissed.

3) It may be mentioned that the suit had been filed for recovery of certain amount, which the plaintiff claims, had been given as a friendly loan to deceased Satwinderpal Singh, who for the purpose of its repayment had allegedly issued certain post dated cheques to the plaintiff. He, however, expired before maturity of the cheque dates on account of which the petitioner-plaintiff filed the instant suit for recovery in which he took a plea that the cheques in question were issued to him in lieu of the loan by deceased Satwinderpal Singh in the month of February, 2014.

4) The defendants contested the suit and in their written statement they raised a plea that there was no question of their predecessor having issued

the cheques in the month of February, 2014 since, he had been admitted in hospital many days earlier and succumbed to his illness inside the hospital on the morning of First February itself. The petitioner nevertheless filed his replication in which he reasserted the veracity of the original plea.

5) Thereafter, when the matter came up at the trial stage, the plaintiff after having taken not less than six opportunities filed the amendment application by way of which he wanted to sought to change the averments of the deceased having taken the loan/issued the cheques to him in the month of January, 2014 instead of February, as pleaded earlier.

6) The Ld. Trial Court, however, dismissed the application by relying on the decision in **Modi Spg. & Wvg Mills Co. Ltd. V. Ladha Rani, 1976 (4) CCC 320** wherein it had been observed that leave to amend pleadings will be refused if it introduced to totally different, new and an inconsistent case or changes the fundamental character of the suit or defence. Thus, according to the Trial Court, *“not only does the said act of the plaintiff set up an inconsistent suit but also reeks of a mala fide intention. Allowing the said application will not only cause prejudice to the defendant but will also outrightly lead to abuse of the discretion awarded under order 6 rule 18 as the said leave for amendment has not been made in good faith.”*

7) It is now the claim of the petitioner that this mistake regarding the month of giving loan and issuance of the cheques in return by the deceased was actually an oversight on the part of his Ld. counsel, and when the mistake was detected, he immediately changed his counsel and filed an application for amendment of the earlier pleading. He also relies on the decision of the Supreme Court in **Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344 and 365** which was followed by this Court in **Ramanand**

**Vs. Sedhu and others, 2010 (2) R.C.R. (Civil) 31**, wherein it is held that:

*“Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act, 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”*

8) In the opinion of this Court, undoubtedly, there is inordinate delay on the part of the plaintiff in seeking the amendment but the proposed amendment can certainly not be regarded as having the effect of changing the nature and character of the suit or the pleadings. The petitioner seeks to rectify what he claims was an innocuous mistake regarding the particular month in which the disputed transactions allegedly took place. It could be argued that by doing so he would be going back on his vital admissions, but on perusal of the written statement, which has been tendered before this Court by Ld. counsel for the caveator, it is seen that at no point the genuineness of the signatures of deceased Satwinderpal Singh on the disputed cheques had themselves been questioned. On the contrary, it was only pleaded that when the said person had died on 01.02.2014 early morning in the hospital, “then how he took loan of Rs.2 lacs from the plaintiff in the month of February, 2014 and when Sh. Satwinderpal Singh died on 01.02.2014 then how he issued two

cheques dated 07.12.2014 respectively in favour of the plaintiff for repayment of any alleged amount.”

9) It, thus, becomes clear that the dispute which emerges, is not about the genuineness of the signatures of the deceased on the impugned cheques, but about the time/month in which the same were made. Therefore, by way of the amendment, the plaintiff seeks to rectify what he claims is an inadvertent error in the original pleadings to make it consistent with the facts and circumstances and for which he imputes the responsibility to his erstwhile counsel. In view of the above, this Court is of the opinion that the prayer of the petitioner-plaintiff, howsoever belated, cannot necessarily be taken to be a frivolous one, so long as there is otherwise no dispute regarding genuineness of the signatures of the deceased on the cheques in question. The proposed amendment also in no manner changes the nature and character of the suit or even the basic direction of the pleadings.

10) For the aforesaid reasons, the revision petition is allowed and the impugned order passed by the Ld. Trial Court is set aside subject to payment of costs of Rs.20,000/- in favour of the defendants-respondents, for the delay occasioned.

11) The Ld. Trial Court shall therefore permit the petitioner-plaintiff to file his amended plaint, and also grant opportunity to the defendants to file any additional written statement against the same.

(SUDIP AHLUWALIA)  
JUDGE

**October 11, 2018**

*harsha*

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