

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

C.R. No.7324 of 2015 (O&M)

Date of Decision: February 12, 2018

Gurjeet Singh

...Petitioner

Versus

Ishwar Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. HPS Gumman, Advocate
for the petitioner.

Mr. Subhash Aggarwal, Advocate
for the respondent.

FATEH DEEP SINGH, J.

Plaintiff-Gurjeet Singh, now petitioner preferred against defendant Ishwar Singh, now respondent, a suit for damages for recovery of Rs.35,000/- detailed in the head note of the plaint along with interest @ Rs.2% per month on the grounds that plaintiff had booked a marriage palace of the defendant for the marriage of his daughter on 6.10.2011 for which he has given advance money but subsequently the defendant backed out and, hence, the suit.

It was during the course of trial of the suit before the evidence was to be recorded the plaintiff moved an application under Order I Rule 10, Order VI Rule 17 read with Section 151 CPC for amendment of the plaint as well as for impleading Pawandeep Singh, son of defendant as party to the suit claiming that booking receipt/order was duly executed and signed by the plaintiff and Pawandeep Singh son of Ishwar Singh, thus, the latter is a necessary party and, therefore, wanted to incorporate his name as

one of the defendant to seek relief. The same was opposed by defendant on the grounds that the proposed amendment cannot be allowed and that such an application cannot be allowed as Pawandeep Singh was not a necessary party and sought dismissal. The Court of learned Civil Judge, Junior Division, Nabha through impugned order dated 08.10.2015 dismissed the application. Aggrieved over this, the petitioner has come up in this civil revision.

Heard, learned counsel for the parties and perused the records of the case.

As is there in the submissions of the two sides, the suit was still at nascent stage for framing of issues and leading of evidence when the application in question was moved by the petitioner containing the specific allegations that it was Pawandeep Singh who was sought to be arraigned as defendant after amendment has signed this receipt and, thus, was a necessary party. The very provisions of Order VI Rule 17 CPC are reproduced as below to lay emphasis:-

“Amendment of pleading; The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be 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.”

It also qualifies the requirement of sub-rule 2 of this provision wherein, it has been specifically mentioned that amendment where the words are to be added or omitted or substituted would be

specifically stated. Since as per the admitted stand, the trial is yet to start, so to the mind of this Court, there is no legal bar for the trial Court to have allowed application when there are specific allegations against Pawandeep Singh, who happens to be son of the defendant and is signatory to the receipt as per contentions of the learned counsel for the petitioner. Though, much resistance has sought to be offered by learned counsel for the respondent on the grounds that it will lead to multiplicity of litigation and delaying of suit. However, the same does not impresses the Court. Since it is the contentious issue and would have bearing on the very outcome of the suit, therefore, arraying the said person as defendant No.2 would certainly assist the Court in coming to a judicious decision and merely because due to some oversightness earlier the name was not incorporated does not bars the petitioner from having recourse to such a provision which is for advancement of justice. The impugned order is purely based on the ground that applicant-plaintiff was having knowledge failed to do so certainly was not a legitimate ground to deny the relief in question. The impugned order is certainly bad in law and needs to be set aside, thereby, allowing the present revision petition.

(FATEH DEEP SINGH)
JUDGE

February 12, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No