

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

CR no.6992 of 2018

Date of Decision: 27.11.2018

Gopal Singh

...Petitioner

Vs.

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ashok Giri, Advocate, for the petitioner.
Mr. Mohd. Yousaf, Advocate, for respondent no.1.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the trial court dated 25.09.2018, by which the application of respondent no.1-plaintiff, seeking to amend the plaint, has been allowed.

A perusal of the impugned order shows that the trial has not commenced, inasmuch as not even the issues have been struck in the suit.

Learned counsel for the petitioner submits that, firstly, vide the amended plaint, respondent no.1 has also added two more defendants without any application under Order 1 Rule 10 CPC having been filed and further, he has taken two mutually destructive pleas in the plaint, by way of an alternative relief claimed.

Having considered the matter, it is also seen that the respondent-plaintiff has contended that he was generally not resident in India and that therefore he had executed a power of attorney in favour of defendant no.3 in the suit (stated to be wife of the petitioner herein), the

petitioner and respondent no.1, (i.e. the plaintiff), being brothers.

The application under Order 6 Rule 17 CPC having admittedly been filed at a stage when the issues have also not been struck, with not even a written statement having been filed even to the original plaint, I see no reason to interfere with the impugned order.

As regards any question of mutually destructive pleas not permissible to be taken in the plaint, that would be something which the petitioner would be always free to agitate in the written statement to be filed by him, which would be gone into by the trial court if it considers that it is an issue to be looked into, and as regards no application under Order 1 Rule 10 CPC having been filed before the impleadment of defendants no.6 and 7 in the amended plaint, though learned counsel for the petitioner is correct to the extent that a formal application in that regard should have been moved, I still see no reason to interfere with the impugned order by holding, simply on that count, that the amended plaint could not have been filed, it being a wholly procedural error made at a stage when the written statement to the original plaint had also not been filed.

Consequently, finding no merit in the petition, it is dismissed.

However, nothing stated hereinbefore will be taken by the trial court to be an observation of this Court on the merits of the case for or against either party, with the entire issue, including the factum of any mutually destructive pleas as would not be permitted to be taken, to be gone into by that court, wholly on merits.

Considering the fact that the application for amendment of the suit was filed two years after the original plaint was filed, the costs imposed by the learned trial court on the respondent-plaintiff, for amendment thereof, are increased to Rs.7,000/-.

27.11.2018
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes