

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CR-7579-2014

Date of Decision:14.02.2018

Yogesh Sharma

.....Petitioner

Versus

Ralli Rice Mill, Village Ralli & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. R.V. S. Chugh, Advocate,
for the petitioner.

Mr. Sunny Singla, Advocate,
for the respondents.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India, impugning the order dated 10.09.2014 (Annexure P-5) passed by learned Additional Civil Judge (Sr.Divn.), Budhlada, whereby application filed by the petitioner-plaintiff under Order 6 Rule 17 read with Section 151 CPC seeking permission to amend the suit and application under Order 1 Rule 10 CPC for impleading the other defendants as parties to the suit, were dismissed.

Briefly stated, the petitioner-plaintiff has filed a suit for recovery for an amount of ₹2,74,838/- against the respondent-defendant- Ralli Rice Mill through its owners/partners Hemraj son of Sehaj Ram and Harinder Singh son of Ranjit Singh. In para 2 of the plaint, the plaintiff has pleaded as under:-

“That the Ralli Rice Mill is doing the business at place Ralli and defendant Nos.2-3 are the owners, partners of defendant No.1 firm and are conducting its business and

do give and take, which also has kept account books for keeping the record and it files the return. The plaintiff has knowledge of the defendant Nos.2-3 to be partners/owners and on telling by defendant Nos.2-3 that defendant No.1 has other partners/owners, they will be arrayed as parties to the suit, the plaintiff is reserving right for the same.”

In response to the plaint so filed by the plaintiff, the respondents-defendants have filed the written statement and the following preliminary objections were taken:-

“That in the present suit all the partners have not been arrayed as parties to the suit, because Ralli Rice Mill village Ralli has more partners except the partners mentioned in the present suit, who are also necessarily required to be arrayed as party. As such the suit is liable to be dismissed.”

The contents of para 2 of the plaint were also replied, which read as under:-

“That the reply of para no.2 of the plaint is that Ralli Rice Mill is working at place Ralli and the plaintiff has not arrayed all the partners of Ralli Rice Mill place Ralli, which are necessary to be arrayed as party.”

The suit was filed on 13.04.2011 whereas written statement was filed by the respondents-defendants on 16.02.2012. It is on 19.07.2012, the plaintiff has filed the aforesaid application seeking amendment in the suit and to implead the new partners. However, the application so filed by the plaintiff was dismissed by the learned Additional Civil Judge vide order dated 10.09.2014 on the ground that the plaintiff remained silent for a considerable period and had not made any efforts to seek required

amendment immediately after the filing of the written statement by the

defendants and it is at this stage when evidence of the plaintiff is almost on the verge of conclusion, the present application under Order 6 Rule 17 CPC was filed. The plaintiff wants to delay the proceedings in one way or the other.

Through the instant revision petition, the petitioner has challenged the order dated 10.09.2014 dismissing the application stated here-in-above.

Learned counsel for the petitioner has argued that the petitioner-plaintiff has specifically averred in the plaint that the defendant-Ralli Rice Mill is doing the business and to his understanding, defendant Nos.2 and 3 are owners and partners of the defendant-firm, as they are conducting its business and maintaining the account books. While filing the written statement, defendants have stated that some other persons are also partners of defendant No.1, therefore, the petitioner-plaintiff wants to implead them as defendants in the case. The plaintiff has put a rider in the plaint that as and when he comes to know about other partners, he will array them in the suit and therefore, he has reserved the right to array other partners accordingly. He has further argued that as defendant Nos.2 and 3 were projecting themselves to be the only owners of the defendant-firm, the plaintiff filed the suit against defendant Nos.2 and 3 only. It is only on the basis of written statement, it has come to the notice of the plaintiff that there are some other partners also in the firm. The plaintiff while moving the application for amendment of the suit and the application under Order 1 Rule 10 CPC for impleading the parties in the suit, has sought the following amendment in the plaint which are referred in para 3 of the application, which reads as under:-

“That in the plaintiff firm except partner Yogesh Sharma, there are Devki Nandan son of Chandu Lal and Yogita Sharma w/o Roop Chand, regarding which also the plaintiff wants to mention in his suit. So the plaintiff wants to make amendments in his suit as per following:-

(a) That in the heading of the suit in line No.6 after Ranjit Singh, Rakesh Kumar son of Hemraj, Parveen Kumar son of Mehar Chand, Sodha Rani d/o Ruldu Ram, Sawaranjit Singh son of Ranjit Singh, Kamaldeep Singh son of Surjit Singh, Rama Rani w/o Bharat Bushan would be mentioned and their after they will be impleaded as defendant Nos.4 to 9 respectively and in the heading of the plaint after deleting the plaintiff would mention firm M/s Sharma and Company Commission Agents Budhlada Teh. Budhlada Distt. Mansa through partner Yogesh Sharma son of Devki Nandan Sharma r/o Budhlada.

(b) That para No.1 of the plaint will be deleted and the new para will be mentioned as per follows:-

That the plaintiff firm is doing the business of Commission Agents at Place Budhlada, to which the land owners take their crops for sale purchase. The plaintiff firm has three partners Yogesh Sharma son of Devki Nandan Sharma, Devki Nandan Sharma son of Chandu Lal and Yogita Sharma w/o Roop Chand r/o of Budhlada and Devki Nandan Sharma and Yogita Sharma partners of the firm have given the authority to Yogesh Sharma son of Devki Nandan Sharma for filing suit on behalf of the firm and Yogesh Sharma has personal knowledge of entire give and takes of the firm. The plaintiff firm as per the customs of the Mandi and on the basis of instruction of different departments have kept account books, in which at the time of give and take and at the time of sale-purchase of the crops, the entries are made as per law and in the evening the balance is reduced into writing. The account books of the firm are used for the purposes of

department of income tax, sale tax, market committee, the firm used to pay the income tax and file returns.

(c) That in para No.2 in line No.5 from words defendant No.2-3 to reserve are to be cut and in place of that defendant No.4 to 9 are the partners/owners of defendant No.1 Ralli Rice Mills as per the record would be mentioned.

(d) That in end of the plaint submitted by Yogesh Sharma to Mansa will be deleted and in that place firm M/s Sharma and Company Commission Agents Budhlada Teh. Budhlada Distt. Mansa through partner Yogesh Sharma son of Devki Nandan Sharma r/o Budhlada would be mentioned.”

On the other hand, learned counsel for the respondents-defendants has argued that filing of the present application to seek amendment in the plaint is nothing but delay tactics and the plaintiff was already aware of other partners in the firm and therefore, there is no illegality in the impugned order passed by the civil court.

I have heard the learned counsel for the parties.

The provision of Order 6 Rule 17 CPC provides amendment in the pleadings and the parties can seek amendment in the suit at any stage. In the case in hand, suit was filed on 13.04.2011 for recovery of the amount as detailed in the plaint. The defendants have filed the written statement on 16.02.2012, wherein they have raised a specific objection that the other partners have not been arrayed as parties to the suit and it is only on 19.07.2012, an application seeking amendment in the suit under Order 6 Rule 17 CPC was filed by the plaintiff.

A bare perusal of the averment made in the plaint shows that at the time of filing of the suit, the petitioner had reserved his right to implead

the other partners/owners in case it comes to his knowledge at a later stage. Therefore, in the given circumstances, he had impleaded only defendant Nos.2 and 3. But at a later stage i.e. after filing the written statement, it came to the notice of the plaintiff that there are other partners also in the firm and it is in these circumstances, the plaintiff has filed the application seeking amendment in the suit, so as to implead the other defendants as referred in para 3(a) above. The petitioner has also sought amendment in paragraph 3 of the plaint to the effect that the plaintiff was doing the business of commission agent along with three partners i.e. Yogesh Sharma, Devki Nandan and Yogita Sharma. Therefore, this Court finds that there is no inordinate delay on the part of the plaintiff to move the application seeking amendment in the suit. Moreover, he has filed the suit against M/s Ralli Rice Mill and it was thus obvious that the partners in the said Rice Mill were required to be impleaded and the moment it came to the notice of the plaintiff, he has moved an application seeking impleadment of other partners. Therefore, there is a justifiable reason with the petitioner to move an application seeking amendment in the suit at this stage. Moreover, the petitioner had reserved his right to implead other partners in case it comes to his notice even at a later stage.

Accordingly, the present revision petition is allowed and the impugned order dated 10.09.2014 (Annexure P-5) passed by the Additional Civil Judge, Budhlada, is hereby set aside. The petitioner is at liberty to file amended memo of parties before the civil court.

February 14, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No