

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

**Civil Revision No. 7951 of 2016**  
**Date of decision : April 27, 2018**

Baldev Kumar Tandon

....Petitioner

versus

Krishan Kumar Tandon

....Respondent

**Coram: Hon'ble Mr. Justice Fateh Deep Singh**

Present : Mr. Animesh Sharma, Advocate, for the petitioner

Mr. H.K. Aurora, Advocate, for the respondent

**Fateh Deep Singh, J. (Oral)**

The present petitioner Baldev Kumar Tandon who then was the plaintiff filed against the present respondent Krishan Kumar Tandon his brother a suit for recovery of Rs 10,20,000/- on the grounds spelled out in the plaint. It was during the course of trial after even the testimony of the plaintiff has been recorded, an application was moved by the plaintiff for amendment of the plaint on the grounds that at the time of filing of the suit, the plaintiff failed to incorporate in his pleadings for what reasons the cheque was issued and the amount needs to be recovered and claims amendment to be explanatory in nature and will not change the nature of

the suit or the cause of action and is not likely to prejudice to the other side.

To the same, in reply, the defendant-respondent took the plea that the trial has already commenced and the plaintiff has already testified and cross-examined and at this juncture is trying to introduce new case and cause of action much to the prejudice of the respondent by changing very nature of the suit and through impugned orders dated 17.10.2016, the court of learned Additional Civil Judge (Senior Division), Nakodar dismissed the application being devoid of any merit. Same was challenged by the unsuccessful applicant-plaintiff before this Court in this revision impugning that the same was contrary to the settled principles of law and wrong interpretation of Order 6 Rule 17.

Heard Mr. Animesh Sharma, Advocate, for the petitioner, Mr. H.K. Aurora, Advocate, for the respondent and perused the records.

The amendment in the provisions of Order 6 Rule 17 were brought about with effect from 1.7.2002 for specific purpose to prevent dilatory tactics by the parties by resorting to such means and the amended provisions are reproduced as below to lay emphasis:-

“17. Amendment of pleadings:- 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 is the admitted contentions of the two sides and is otherwise settled law that the grant of relief in an application for amendment would be subject to certain conditions comprising where the nature of the suit is changed by permitting amendment or such an amendment would result in introduction of new cause of action and would be intending to prejudice the other party or even otherwise if it defeats the very law of limitation. Reverting back to the instant case, the revisionist had filed the suit on 26.2.2011 and the plaintiff has been examined and cross-examined and at this belated stage had moved an application on 30.11.2012 when the suit was virtually at stage of almost final adjudication. Firstly as has been contended by Mr. Aurora counsel for the respondent that if the revisionist is allowed to amend his suit would certainly introduce new cause of action as to the reasons why this cheque was issued and amount was due besides would help the plaintiff to improve upon his suit by filling in the lacunae which could not do so in his pleadings and evidence and which arguments are sought to be opposed with much vehemence by the counsel for the petitioner on the grounds that it was only explanatory in nature and would neither change the nature of the suit nor introduce new cause of action or in any manner prejudice the case of the other side and has placed reliance on **Abdul Rehman and another vs Mohd. Ruldu and others, (2012) 11**

**Supreme Court Cases 341; Baldev Singh and others vs Manohar Singh and another (2006) 6 Supreme Court Cases 498; Chander Kanta Bansal vs Rajinder Singh Anand, (2008) 5 Supreme Court Cases 117; Rajkumar Gurawara (dead) through LRs vs S.K. Sarwagi and Company Private Limitd and another, (2008) 14 Supreme Court Cases 364 and J. Samuel and others vs Gattu Mahesh and others, (2012) 2 Supreme Court Cases 300.**

Appreciating the submissions as has been laid down in the cited ratios, the words “Due diligence” though has not been defined in Code of Civil Procedure, however, the dictionary meaning of word “diligence” means careful and persistent application or effort. Further it was held that “diligent” means careful and steady in application to one's work and duties, showing care and effort and where amendment of the pleadings is sought after commencement of the trial, the word “due diligence” provide test to determine if the Court's discretionary power needs to be exercised judiciously to allow amendment or not. In the present case the petitioner-plaintiff as per his own stand has failed to omit the material point as to the issuing of the cheque for what reasons the amount was due and thus, there is omission of specific plea which was necessitated to be pleaded as well as proved for the success of his suit and thus, such a casual approach and gross insolence on the part of plaintiff to pursue his claim certainly to the mind of this Court amounts to negligence and lack of “due diligence”. The cited ratios do not come to the aid of the petitioner on account of material factual

disparities and in the present case the petitioner himself has been examined and cross-examined. Rather the apprehension expressed by the counsel for the respondent that there is every likelihood that the plaintiff would materially improve his case certainly is not un-called for and un-justified. The counsel for the petitioner could not convince this Court how the impugned finding do not stand the legal test of being based on sound principle of law. The same needs to be upheld. The revision being hopelessly without any merit stands dismissed.

**April 27, 2018**  
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**( Fateh Deep Singh )**  
**Judge**

*Whether speaking/reasoned ?*

*Yes/No*

*Whether Reportable ?*

*Yes/No*