

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4326 of 2018

Date of Decision: 03.05.2019

M/s R.K. Filling Station, Nurmahal-Phillaur Road

.....Petitioner

Vs.

Bharat Petroleum Corporation Limited and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr. Aman Arora, Advocate,
for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

The issue in this petition is whether the amendment sought, in a plaint, being of the nature that it is, can be allowed even at a stage when the trial would be deemed to have commenced, after issues have been framed and five opportunities have been given to the petitioner-plaintiff to lead his evidence, the amendment sought being one seeking a declaration to the effect that the petitioner-firm (plaintiff) is now constituted of Ravinder Kumar and Sunil Dhir, the latter being the son of the original partner who died in the year 2008.

Though learned counsel for respondents has vehemently argued that the trial having commenced, and knowledge of the reconstituted firm obviously being with the petitioner at the time that the suit was filed in the year 2015, it is too belated a stage for seeking any amendment that changes the nature of the suit, and he would not be entirely wrong in his submission, however, it not being denied

that in the original plaint the petitioner had actually sought a decree of mandatory injunction also to be issued, to the same effect as he is now seeking a declaration in respect of, I see no reason why the petition should not be allowed, keeping in view also the fact, that no evidence has actually been led, though 5 opportunities have been granted to the petitioner to do so.

As per the impugned order, the learned trial Court has dismissed the application filed under Order VI Rule 17 CPC on the ground that the proposed amendment was well within the knowledge of the plaintiff-firm, as preliminary objection no. 1 was taken by the respondents-defendants in their written statement, to the effect that the suit was not maintainable and instead a suit for declaration should have been filed.

Consequently, this petition is allowed subject to the petitioner paying costs of Rs. 15,000/- to the respondents, upon payment of which the amended plaint shall be taken on record, with naturally liberty to the respondents to file an amended written statement thereto.

May 03, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes