

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5807 of 2016 (O&M)

Date of Decision: 10.04.2019

Raj Kumar

.....Petitioner

Vs.

Ajit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Alok Jain, Advocate,
for the petitioner.

Mr. Dinesh Arora, Advocate,
for respondent no. 1.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order passed by the Civil Judge (Junior Division), Faridabad, dated 20.07.2016 (copy Annexure P-1), by which the application filed by respondent no. 1 (plaintiff in the suit), seeking amendment of his plaint has been allowed.

Mr. Jain, learned counsel for the petitioner, points out that the application itself was filed on the same date, i.e. 20.07.2016, in the forenoon session before that Court, with the following order passed:-

“Case was fixed for arguments on the application under Order VII Rule 11 CPC. However, at this stage counsel for plaintiff has also moved an application under Order VI Rule 17 CPC. Copy of the same supplied to the opposite counsel. As the present case is an action plan case and is more than 10 years old, same be put up after lunch for arguments.”

Thereafter, in the after-noon session, the following order had been

passed as is now impugned:-

“Arguments on the application under Order VII Rule 11 CPC as well as under Order VI Rule 17 CPC, heard. Vide my separate order of even date the formal application under Order VII Rule 11 CPC has been dismissed. Again the application under Order VI Rule 17 CPC has been allowed. Now the case is adjourned to 22.07.2016 for filing amended plaint on behalf of the plaintiff.”

Thus, he submits that though counsel for the petitioner (defendant no. 1 in the suit) was present at the time that the impugned order was passed, very obviously no time even for filing a reply to the said application was given to the petitioner, with it having been held in the detailed impugned order passed on the same very date (a copy of which is also a part of Annexure P-1 with the present petition), that since Court fee *ad valorem* had been already affixed by the respondent-plaintiff on 11.01.2016, with this Court having directed in a revision petition (CR No. 2169 of 2014) on 15.12.2015, that such court fee be affixed, it was to be presumed that this Court had “impliedly directed the suit to be treated as a suit for specific performance only.”

Thereafter, it has been observed in the impugned order that a perusal of the case file revealed that the suit was instituted in the year 2006 and therefore had become more than 10 years old, with it being at the very initial stage, with issues also still not framed, and consequently, no prejudice would be caused to the defendant if the plaintiff was allowed to amend the suit.

Yet further, it was observed that it was not a case where any admission made in favour of the defendants was being withdrawn by the plaintiff, in the garb of an amendment, and with the whole claim of the plaintiff being based upon an agreement of sale, the amendment was very necessary for determination of

the real controversy between both the parties.

Lastly, it was observed that the defendants would be at liberty to rebut the claim of the plaintiff in the amended suit by way of filing a written statement.

Learned counsel for respondent no. 1, on the other hand, submits that no objection also having been raised by counsel for any of the defendants (including the present petitioner), with regard to filing a reply to the application and the matter actually having been argued before the trial Court, the contention of Mr. Jain is wholly unfounded.

Having considered the matter, though undoubtedly no such objection is seen to be raised by counsel for the respondents (as would be visible from either the short order impugned and from the detailed order accepting the application under Order VI Rule 17 CPC), yet, in the opinion of this Court, the undue haste shown by the trial Court in allowing an application for amendment of a plaint, 10 years after the suit had been filed, even if issues had still not been struck, does not comply with the principles of natural justice.

Simply because a suit had become 10 years old, did not mean that a reply from the defendants could not have been called for in the application filed under Order VI Rule 17, with even a very short date given, perhaps a week or 10 days, for that purpose.

Mr. Jain, learned counsel for the petitioner, has also pointed out that the observation made by the trial Court to the effect that the petitioner, i.e. defendant no. 1 in the suit, would not be prejudiced by the order, is also wholly without any basis, because the amendment is one by which a suit simply seeking a declaration of ownership and nullity of a sale deed executed (and consequential perpetual injunction), gets converted to a suit seeking specific performance of an agreement of sale, and therefore, the question of limitation would also arise and

consequently, the petitioner had a right to oppose the application by way of a detailed reply.

Having considered the matter, in my opinion, I agree with the aforesaid contention of Mr. Jain, and consequently, holding that the petitioner had an indefeasible right of filing a reply to the application under Order 6 Rule 17, this petition is consequently allowed, with the impugned order set aside and the petitioner given an opportunity to file a reply to the said application within a period of 15 days from today, after which a fresh order would be passed on that application by the trial Court, taking into consideration all aspects.

It needs to be observed here that the order passed by this Court (co-ordinate Bench) in CR No. 2169 of 2014 on 15.12.2015, was in a petition that challenged an order passed by the trial Court dismissing the suit of the plaintiff in default, and consequently, the restoration of that suit vide that order, would not clothe the plaintiff with the right to amend the suit also, without considering all aspects of such amendment, which would be now considered by the trial Court while passing the order on the application of the respondent-plaintiff.

Simply because this Court had observed in that order, that because the plaintiff (respondent no.1 herein) had paid court fee *ad valorem*, his suit deserves to be restored, did not mean that it had either approved the amendment on the merits thereof, nor even had commented on any other aspect pertaining to any issue of limitation etc. that may arise as a consequence of any such amendment.

In other words, what was observed by this court with regard to court fee *ad valorem* having been paid by the respondent herein, was wholly in the context of his suit being restored. Obviously, thereafter it had to be decided completely on its own merits, including any 'ancillary' application filed thereafter, or which had already remained pending prior to the dismissal of the suit.

The contention of counsel for respondent no. 1 that this observation need not be made by this Court, as it would prejudice the trial Court, is rejected, in view of the fact that the order passed in that petition is not factually denied to be in a petition that challenged the order dismissing the suit in-default.

However, it is made clear that as regards deciding the application under Order 6, Rule 17 of the CPC, the trial court would adjudicate upon it wholly on its own merits.

April 10, 2019
nitin/vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes