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

CR-6264-2016 (O&M)

Date of decision : 15.01.2019

M/s KLJ Developers Pvt. Ltd.

... Petitioner

Versus

Gyan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Sood, Advocate
for the petitioner.

Mr. Harminder Singh, Advocate
for respondent Nos.1 to 4.

Mr. Nihul Pratap Singh, Advocate
for respondent Nos.5 to 8.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby an application for amendment of the plaint to restore back relief of ₹1,03,28,464/-, in seeking recovery against the defendants despite the fact that court fees had already been paid, has been rejected.

Learned counsel for the petitioner submitted that originally, the plaintiff-petitioner had filed a suit for recovery on various grounds for ₹1,03,28,464/- by paying the courts fees, but later on, sought the amendment and reduced the claim to ₹49,51,000/- as some application for obtaining the licence before the competent authority was pending, which ultimately, resulted into dismissal of the same and in this view of the matter,

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a cause of action arose to seek amendment in the plaint. The suit is at the stage of plaintiff's evidence. He has drawn the attention of this Court to the notice of motion order dated 22.09.2016, whereby the petitioner was granted the liberty to lead evidence in support of the proposed amendment. He further submits that provisions of Order 4 Rule 2 of CPC would not come into play and the suit cannot be said to be without limitation or barred by law of limitation.

On the contrary, learned counsel for the respondents submitted that the approach of the petitioner in moving the application was not only lacking diligence, but also *mala fide*. There was no compliance of the amended provisions of the statute. Even by seeking amendment and confining the relief of ₹49,51,000/-, the petitioner abandoned the claim with regard to ₹1,03,28,464/-, therefore, there is embargo as per the provisions of Order 23 Rules 1 and 3 of CPC, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

In rebuttal, learned counsel for the petitioner submitted that in view of the settled law, the fresh suit is barred and in such circumstances, the application for amendment of the plaint was filed.

I have heard learned counsel for the parties and appraised the paper book.

The facts, aforementioned, are not in dispute.

It would be apt to reproduce the order dated 22.09.2016, which reads as under:-

"Contends that the amendment application at the stage of plaintiff's evidence has erroneously been dismissed on the ground of delay and being not vigilant. Originally, the suit was

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filed for recovery of ₹1,03,28,464/- by paying court fees on the aforementioned amount, but later on the claim was reduced to ₹49,51,000/- as application for obtaining licence before the competent authority was pending and since the application has been withdrawn, therefore, wanted to confine to the original plaint and, therefore, claim cannot be said to be inconsonance with the provisions of Order 4 Rule 2 CPC.

Notice of motion to respondent Nos.1 to 8 for 2.12.2016.

Dasti as well.

Liberty is also granted to the petitioner to serve the respondents through the counsel in the trial Court.

The petitioner is at liberty to lead evidence in support of the proposed amendment."

I am of the view that amendment of such nature particularly, when the court fees was paid, cannot be said to be barred by law of limitation or law as prescribed in Order 4 Rule 2 of CPC, which reads as under:-

"2. Register of suits.—*The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted."*

No doubt the petitioner had not been vigilant in moving the application as the issue had already been framed. Be that as it may, the other party would have a right to rebut the same, though originally the suit was of the same amount as sought to be incorporated and shall also raise objection with regard to the provisions of law at the final stage of the suit.

Keeping in view the aforementioned facts, the impugned order, under challenge is not sustainable in the eyes of law, much less, suffers from illegality, thus, the same is hereby set aside subject to the payment of

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costs of ₹10,000/-.

However, this order of mine shall not take away the right of the defendants to file the amended written statement.

As regards the aforesaid costs, the petitioner-plaintiff shall approach the Divisional Forest Officer, District Faridabad and shall spent the amount of ₹10,000/ for purchasing the *neem* trees, which shall be planted at the place designated by the Department.

Compliance report, in this regard, be sent to this Court.

With the aforesaid observations, the present revision petition stands allowed.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**