

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

**Civil Revision No.6021 of 2018 (O&M)
Date of Decision: 04.10.2019**

**Sarabjit Singh and others Petitioners
Vs
Atul Kumar Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. G.S. Virk, Advocate
for the petitioners.

Mr. Aayush Gupta, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 07.07.2018 passed by the Civil Judge (Junior Division) Ludhiana, whereby the application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint was allowed.

[2]. Plaintiff/respondent filed a suit for possession by way of specific performance of agreement to sell dated 20.12.2006 directing the defendants to execute and get the sale deed registered in respect of land measuring 33 Kanals 8 Marlas situated at village Gaunsgarh, Tehsil and District Ludhiana and for permanent injunction.

[3]. Learned counsel for the petitioners submitted that the agreement to sell was executed on 20.12.2006 on the basis of which suit for possession by way of specific performance was filed by the plaintiff/respondent. The defendants in their written statement have taken specific plea in respect of cancellation of agreement to sell on 22.12.2008, still the application for amendment of plaint was filed on 25.04.2018 and, therefore, filing of application was time barred, even from the date of pronouncement of judgment in **I.S. Sikandar (D) by Lrs. vs. K. Subramani and others, 2013(15) SCC 27** in the year 2013.

[4]. I have considered the submissions made by learned counsel for the parties.

[5]. It is a settled principle of law that all *bona fide* amendments are to be allowed. The amendment of the present nature can be allowed on the ground that the plaintiff has already filed a suit for possession by way of specific performance. Only an amendment was sought to challenge the cancellation of agreement to sell which came in existence on 22.12.2008 during intervening period. In pith and substance, the relief remains the same which is ancillary to the main relief. In the year 2008, at the time of issuance of notice of cancellation on 22.12.2008, there was no such precedent on the issue to lay challenge to the said notice along with the suit. It was only in

I.S. Sikandar (D) by LRs.'s case (supra), the Hon'ble Apex Court made it obligatory on the part of the plaintiff to challenge the notice as well in order to entertain the suit.

[6]. The doctrine of relation back can be applied with reference to Section 22 the Limitation Act, where the limitation could be extended on the ground of wrong being a continued wrong and cause of action for filing a suit for specific performance would remain the same, even the period prior to Limitation Act i.e. the period prescribed under Article 58 of the Limitation Act begins when right to sue first accrues. The accrual of the right for the first time in view of pleadings in the plaint and challenge to the cancellation of agreement to sell would give rise to an arguable notion.

[7]. In **Sharwan Kumar Mittal vs. Vibha Goel and others, 2015(3) PLR 175**, the Co-ordinate Bench of this Court allowed the amendment on the ground that the same has necessitated in view of law laid down in **I.S. Sikandar (D) by Lrs.'s** case (supra) which has made the challenge to be a mandatory.

[8]. This Court in **CR No.5263 of 2016** titled '**Bharat Bhushan vs. Jatinder Kaur and another**' decided on 01.04.2019 after relying upon number of precedents on the subject held that the application for amendment was filed

primarily on the ground of challenging the notice for cancellation of agreement to sell, therefore, in view of law laid down by the Hon'ble Apex Court for the first time in **I.S. Sikandar (D) by LRs.'s** case (supra), an exception can be carved out in the case to bring out the same out of purview of precedent on the ground that it would be a continued wrong as the cause of action for the purposes of limitation would remain the same as per Article 58 of the Limitation Act. The cause of action has to be appreciated when it firstly accrued to the party. Accrual of cause of action have already been pleaded in the plaint and the subsequent challenge to the notice would not give rise to any such limitation to be attracted for seeking the amendment to be time barred. The effect of amendment viz-a-viz. limitation and maintainability of the suit would be decided by the trial Court in accordance with law.

[9]. In **CR No.1313 of 2015** titled '**Rao Shailender Singh vs. M/s Raitani Buildcon Pvt. Ltd.**', decided on 19.03.2019 further held that all *bona fide* amendments are to be allowed irrespective of stage of litigation. The requirement of challenging notice was not common before pronouncement of judgment in **I.S. Sikandar (D) by Lrs.'s** case (supra). Filing of application in respect of cause of action cannot be commented upon at this stage.

[10]. This Court again in **CR No.1169 of 2017 (O&M)** titled '**Ashok Kumar Batta vs. Sharanjit Kaur and others**', decided on 20.04.2018 again reiterated the view in favour of the plaintiff for amendment in the plaint on the basis of challenge to the notice of cancellation. The cause of action accrued in favour of the plaintiff cannot be defeated as there was no precedent earlier passing of **I.S. Sikandar (D) by Lrs.'s** case (supra).

[11]. If the present controversy is considered in continuation with Article 58 of the Limitation Act, the accrual of cause of action for the first time cannot be spelt out on the basis of notice of cancellation on 22.12.2008 alone.

[12]. It is a settled principle of law that all *bona fide* amendments are to be allowed. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give the verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which bona fides of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be

made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647.**

[13]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party and could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment should be perceived by the court to be necessary for just decision of the case. All amendments are to be allowed which satisfy the aforesaid two conditions. Amendment can be refused, if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost(s). The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the

opposite party and is not capable of being compensated in terms of cost(s).

[14]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court has held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed, if the same subserves the cause of justice and avoids further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should

try the merits of the case for determining the real issue between the parties, provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[15]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or the same is *mala fide*. The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory overtone. In **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763,** the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844,** **Kailash vs. Nanhku and ors., (2005) 4 SCC 480,** and **Rajesh Kumar Aggarwal's** case (supra) has reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedent that it must come to the conclusion that in spite of due diligence, the

parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint.

[16]. The amendment cannot be declined solely on the ground of its being delayed. In **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530** and **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 78** it has been held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse the same. The Court must do full and complete justice between the parties subject to payment of adequate cost (s) to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court.**

[17]. For the reasons recorded hereinabove, I see no justification to interfere in the impugned order passed by the trial Court. The indulgence granted by the trial Court cannot be faulted with any error of jurisdiction, nor the same has resulted in perversity. This revision petition is accordingly dismissed.

October 04, 2019

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No