IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 225 CR-6640-2018
Date of decision : 22.10.2019

Dharam Pal Jain ..... Petitioner

VERSUS

The Assistant Commissioner,
Central Excise and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A. K. Goel, Advocate, for the petitioner.

Mr. Sharan Sethi, Advocate, for respondents No. 1 and 2.

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DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 07.08.2018, passed by the Civil Judge (Junior Division), Bhiwani (for short, the Trial Court), dismissing an application filed by the petitioner under Order 6 Rule 17 CPC through which he sought to amend his plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that way back in the year 2014 the petitioner filed a suit seeking therein to restrain respondents No. 1 to 3 from recovering from him service tax amounting to ₹83,93,396/- alongwith penalty and interest on the ground that such amount was due from M/s National Construction India of which the petitioner was not a partner and therefore, not liable. On being put to notice, respondents No. 1 and 2 appeared before the Trial Court and filed their written statement disputing the petitioner's claim. Thereafter the Trial Court framed issues. Before any party could lead evidence the petitioner filed an application under Order 6 Rule 17 CPC seeking therein to amend his plaint to the effect that respondents No. 1 to 3 be restrained from demanding the aforesaid amount from him and that he be declared not to be a partner of M/s National Construction India against whom respondents No. 1 to 3 had raised the demand of the aforesaid service tax. Through order dated 07.08.2018 the Trial Court dismissed such application on the ground that the sought amendment would change the nature of the suit. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

The petitioner filed a suit seeking therein to restrain respondents No. 1 to 3 from recovering from him service tax amounting to ₹83,93,396/- alongwith penalty and interest as according to him such claim was made out against M/s National Construction India of which the petitioner was not a partner. Now, through the sought amendment the petitioner not only seeks to restrain respondents No. 1 to 3 from recovering from him the aforesaid amount of service tax but also seeks to be declared as not a partner of M/s National Construction India against which, according to him, the aforesaid amount is made out. The amendment sought by the petitioner does not change the nature of the suit and therefore, should have been allowed by the Trial Court especially when admittedly, none of the parties have even began to lead their respective evidence.

In view of the above and subject to payment ₹10,000/- as costs, to be deposited by the petitioner with the Poor Patient Welfare Fund, PGIMER, Chandigarh the impugned order is set aside and the amendment sought by the petitioner is allowed.

The petitioner's suit was filed in the year 2014 and shockingly in the same even after the passage of five years no evidence has been led. Therefore, the Trial Court is directed to dispose of the same expeditiously but not later than ten months from the date of receipt of a copy of this order, of course, after giving adequate opportunity to both sides to lead their respective evidence in accordance with law.

The petition is allowed in the above terms.

22.10.2019 [DEEPAK SIBAL]
shamsher JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No