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

**Civil Revision No.7721 of 2017
Date of Decision:06.03.2019**

Satjit Singh

.....Petitioner

Vs

**M/s Greater Area Ludhiana Development Authority through
its Chief Administrator and others**

....Respondents

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

Present:Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

Mr. Ashish Grover, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 08.08.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana, vide which the application filed by the petitioner for amendment of plaint under Order 6 Rule 17 read with Section 151 CPC was dismissed.

[2]. Brief facts are that plaintiff filed a suit for declaration to the effect that memo No.4562 dated 09.05.2013 is null and void, ultra vires, illegal, arbitrary and *malafide*. He also sought perpetual injunction restraining the defendants from cancelling

the allotment of plot No.1495, measuring 250 sq. yds. Measuring 30' x 75' situated at Phase-I, Dugri, Ludhiana which was allotted to the plaintiff vide memo No.7973 dated 21.09.2010 in open auction. Plaintiff sought further directions against defendants No.1 and 2 for handing over possession of the plot measuring 250 sq. yds. to the plaintiff by removing encroachment by defendant No.3 to the extent of 14.58 sq. yds. allotted to defendant No.3 in an illegal manner.

[3]. Defendants No.1 and 2 contested the suit by filing the written statement. Factum of details as given in preliminary objection No.1 would read as under:-

"1. That the suit of the plaintiff is not maintainable in this present form and is liable to be dismissed. The true facts of the case are that answering defendants auctioned one plot to plaintiff bearing no.1495 measuring 250 Sq. yds. situated at Phase-I, Dugri, Ludhiana @ Rs.32000/- per Sq. Yds. It was terms & conditions of the auction/allotment that plot in question is being auctioned on the basis of "as is where is" and further the exact dimensions of the plot and the area are subject to variations as per the measurement at the time of actually delivery of possession at site and further more in case of reduction in area the access amount shall be refunded/adjusted as the case may be. In this case no doubt 250 Sq. yds. were auctioned but at the time of actual measurement it was found 30' x 75' from front side and 28.5'x 75' from backside. Only 6.25 Sq. yds. is less from the 250 Sq. yds. Answering defendants are ready to refund/adjust the

amount of 6.25 Sq. yds. When the measurement of both the properties were made it was found 61.9' x 75' instead of 60' x 75' of both the plot 30' x 75' was allotted to both the parties and 1.9' was excess and accordingly 1.9' were given to defendant no.3 on his written request. Usually we measure the property from the front side and in this case defendants also measure the property from front side. Later on it came to the knowledge of the defendants that the property from the backside is 28.5' instead of 30'. Added here at the time of measurement there were bushes, mud, garbage, rainy water, pits in this property in dispute i.e. why property in dispute could not measured from backside even otherwise it never happens that property from the front side is correct and less from back side. The plaintiff has not deposited the amount as per the terms and conditions, so defendants are going to cancel the plot in question. The plaintiff has not constructed the property within the specified period as mentioned in the auction/allotment letter that's why plaintiff is also liable to pay non construction charges with interest and further plaintiff has not complied with the other terms and conditions of the allotment. No notice has been served upon the glada prior to filing of this case."

[4]. Plaintiff filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint, proposing to amend the same by adding the relief of directions to defendants No.1 and 2 to execute the sale deed and get the sale deed registered in favour of the plaintiff and further restraining defendants No.1 and 2 from realising the non-construction

charges and interest and further directions to defendants No.1 and 2 to pay the interest @ 24% per annum on the amount of Rs.80 lakhs deposited with defendants No.1 and 2.

[5]. The trial Court dismissed the application on the premise that initially the plaintiff sought relief of declaration in respect of memo No.4562 dated 09.05.2013 to be null and void along with permanent injunction and further directions for handing over the possession to the plaintiff. The case was filed on 01.06.2013 and now the case is fixed for plaintiff's evidence. Two of the plaintiff's witnesses have been examined. The application for adding the relief for directions at that stage was not considered lawful by the trial Court and the same was dismissed.

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

[7]. It is a settled principle of law that effect of the amendment is not to be seen at this stage. All *bona fide* amendments are required to be allowed. It is mandatory on the part of the Court to allow all *bona fide* amendments which are necessary for determining real questions in controversy between the parties. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to pronounce the order in a more satisfactory

manner. 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 fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is to try merit of the case and allow all *bona fide* amendments. Reference can be made to **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors., 2006(2) R.C.R. (Civil) 577** and **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737.**

[8]. 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. The second part is imperative and obligates the Court to allow all amendments which are necessary for determining real issue between the parties. The amendment should not be unjust, nor it should be prejudicial to the interest of the opposite party. The opposite party can be compensated in terms of costs. The unjust amendment should not be allowed for which the opposite party would not be compensated in terms of costs or it would deprive the opposite party for a valuable right which has accrued to him/her with the passage of time. While granting or rejecting the amendment, the Court has to take into consideration whether the amendment sought to be

made is imperative for effective adjudication of the case and *bona fide* nature of the proposed amendment. The amendment should not cause any prejudice to the opposite party which cannot be compensated in terms of costs. The proposed amendment should not change the nature and character of the suit.

[9]. In the instant case, the original plaint contained relief of declaration in respect of memo No.4562 dated 09.05.2013 to be illegal, null and void. Perpetual injunction has also been sought seeking to restrain defendants No.1 and 2 from cancelling the allotment of plot No.1495 in favour of the plaintiff and also to hand over the possession of the plot in question by removing encroachment by the subsequent allottee/defendant No.3. Even though the allotment letter in favour of the plaintiff is suggestive of the fact that the same was on the basis of “as is where is” and the area was subject to variations as per measurement at the time of actual delivery of possession and was also subject to reduction in area for which refund could be made. In any case, there is no doubt that the allotment was in respect of 250 sq. yds. which was auctioned in favour of the plaintiff. The measurement carried out at the spot did not yield in favour of the plaintiff for the exact area allotted to him, rather the additional area of 14.58 sq. yds. was allotted to defendant No.3

which has reduced the area allotted to the petitioner. The proposed amendment in the plaint is to the effect that the relief of directions to defendants No.1 and 2 be incorporated so as to get execution and registration of the sale deed and restraining defendants No.1 and 2 from realising the non-construction charges and interest with further directions to defendants No.1 and 2 to pay the interest on the amount of Rs.80 lakhs deposited with them.

[10]. In my considered opinion the proposed amendment can be answered after adjudication of the */is* on merits. At the time of deciding the case on merits for the purposes of consequential relief as proposed, there has to be proper pleadings on record. In my considered opinion, no prejudice would be caused to the defendants, if the proposed amendment is allowed which can only be considered after adjudication of the */is* on merits. All the proposed prayers would fall under consequential phenomenon and would not change the basic character of the suit in any manner.

[11]. It is a settled principle of law that the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution. The power of the Court for allowing 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 and it should be exercised in the larger interest for doing full and complete justice to the parties. The amendment should be allowed, if the same subserves the cause of justice and avoids further litigation. Reference can be made to **Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27** and **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481.**

[12]. 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. In the event of filing application 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 enough to cover any stage of litigation. The principles

enunciated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903** can be referred in this regard.

[13]. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. *Malafide* amendments or unjust jurisdictional fact, as envisaged therein cannot be allowed for the purposes of amendment. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties.

[14]. 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. Reference can be made to **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078**. and **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court**.

[15]. Since no prejudice is going to be caused to the

respondents/defendants, as the proposed amendment is merely in the form of consequential relief. Firstly the Court will adjudicate the *lis* on merit and the relief of directions as sought would be given effect only thereafter. For granting consequential relief in my considered opinion, no prejudice would be caused to the defendants in any manner.

[16]. Having considered the controversy in the aforesaid facts, I deem it appropriate to allow this revision petition. The impugned order dated 08.08.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana is set aside. Normal consequences to follow.

March 06, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No