

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

CR-8822-2017(O&M)

Date of decision:-4.9.2019

M/s Dharam Engineering Company and another

...Petitioners

Versus

M/s Venkateshwar Valves and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

None for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that M/s Dharam Engineering Company, G.T. Road, Batala and its partner Sh.Sanjay Sanan had brought a suit for recovery of Rs.5,18,905/- against the defendants M/s Venkateshwar Valves, Chinasattar Street, Tara Pet, Vijayawada and its sole Proprietor Smt.Poonam Malhotra. On getting notice, the defendants had put in appearance and filed written

statement contesting the suit. Trial in the Court of Additional Civil Judge (Sr.Divn.), Batala proceeded. The plaintiffs moved an application under Order 6 Rule 17 read with Section 151CPC for amendment of the plaint contending that they had recently come to know that inadvertently and as a result of clerical mistake, they could not mention two bills i.e. Bill No.2504 dated 10.1.2012 for Rs.3,03,195/- as well as Bill No.2528 dated 16.2.2012 for Rs.2,22,870/- in para No.4 of the plaint and these bills are important documents for proper adjudication of the case.

The application was resisted by the defendants contending that the plaintiffs have not made any mention of these bills in para No.4 of the plaint on or before 2.2.2015 and defendants have filed written statement taking a specific defence; no evidence has been led by the plaintiffs qua the bills sought to be incorporated in the plaint and the defendants have already taken defence that they have paid more than the amount claimed by the plaintiffs; even final arguments were addressed by both the parties and thereafter, the present application was moved to fill up the lacuna; the claim put forward by the applicants/plaintiffs is barred by limitation, therefore, amendment should not be allowed as it would amount to *de novo* trial.

The application was disposed of by the trial Court vide a detailed order, which is being impugned in the present revision

petition. For ready reference, the relevant portion of the order is being reproduced as under:

4. In this application, it is submitted by the applicants that due to clerical mistake, they have not referred the Bill No.2504 dated 10.01.2012 for Rs.3,03,195/- and Bill No. 2528 dated 16.02.2012 for Rs.2,22,870/- in the plaint, which are important documents for the effective adjudication of the matter in hand. From the perusal of plaint it is evident that plaintiffs have specifically averred about the bills numbers against which the amount is stated to be due towards defendants in para no.4 of the plaint, where along-with bills numbers, dates and amounts are specifically referred, however no reference was made by the plaintiffs about these two bills in the said para nor anything has been stated about it in the plaint. Furthermore, plaintiffs have produced on record copies of bills as referred in the para no.4 of the plaint, but even no copy of Bill No.2504 dated 10.01.2012 for Rs.3,03,195/- and Bill No. 2528 dated 16.02.2012 for Rs.2,22,870/- has been attached along-with the plaint nor reference of it was made earlier in the

suit filed by the plaintiffs. Thus, it is clear that plaintiffs have not sought the recovery of these two bills from the defendants in the present case and the present application, which has been moved at the final stage, when even part arguments have been heard, is nothing, but an attempt to fill up the lacuna, as such it cannot be allowed. Nothing has been stated by the plaintiffs in this application as to why the reference of these bills was not made earlier, which were well within the knowledge of plaintiffs at the very beginning. Even, as averred by the respondents, it is clear from the perusal of written statement filed by them that they have Specifically taken the defence that they already paid excess amount to the plaintiffs, thus the defect, if any, in the plaint was well within the knowledge of plaintiffs at the very beginning and the same was pointed out to them by defendants, however despite this fact no amendment was sought by plaintiffs earlier, but at the stage when part arguments have already been heard, which cannot be considered at all. Accordingly, from all the facts as referred above, it is clear that the application in hand is

devoid of merits to be considered and same is hereby dismissed and disposed of.

I have heard learned counsel for the revisionists/plaintiffs besides going through the record.

The order is quite detailed and well reasoned. It does not suffer from any illegality or infirmity much less apparent on the face of it. Proviso to Order 6 Rule 17 CPC clearly dilates that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Here the application for amendment had been filed at the fag end of the trial when the arguments had been heard partly. The applicants/plaintiffs have been unable to show that in spite of due diligence, they could not plead these bills in the plaint or move application for amendment before commencement of the trial.

Learned counsel for the revisionists/plaintiffs has referred to judgments **Jai Singh Dahiya Versus State of Haryana and others, 2016(3) RCR(Civil) 914** and **Surender Kumar Sharma Versus Makhan Singh, 2009(4) RCR(Civil) 597** in support of his contention that amendment can be allowed at a belated stage also. But here the facts and circumstances of the case do not warrant allowing of such amendment and the judgments do not come to help

the revisionists/plaintiffs.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

4.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No