

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5948 of 2016(O&M)
Date of Decision: 14.03.2019

Vineet Handa and others

.....Petitioners

Versus

OZO Media Estate Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Verma, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

[1]. While issuing notice of motion on 16.09.2016, following
order was passed:-

"CM No.18341-CII of 2016

Allowed as prayed for.

CM No.18641-CII of 2016

Allowed as prayed for and Annexure P-6 is taken on
record.

CR No.5948 of 2016

Contents, inter alia, that the prayer made by the petitioners (plaintiffs), seeking amendment in the plaint, has been declined for; (1) the application seeking amendment in the plaint was moved eight years after institution of the suit; (2) the persons i.e.Ashok Mahindru, his family members and employees who alleged to have fabricated the documents in question, and had played fraud were not even parties to the suit; (3) indirectly, the plaintiffs wanted to get the relief which could not be received by them from the Company Law Board.

It is contended that the reasons assigned by the Court in support of its order are perverse. For, the delay in moving the application, seeking amendment in the pleadings, by itself could never be the ground to decline the proposed amendment. Rather, he submits that if the amendment prayed for is crucial, and enables the Court to arrive at a just and fair decision in the matter then the same has to be granted, notwithstanding that the prayer for amendment was belated. Further, there was a hardly any occasion to array those persons, who purport to have fabricated the documents and played fraud as parties to the suit, for that could be possible only if the proposed amendment was granted. He submits that the Company Law Board never examined the plea of fraud, least declined the relief in this regard. Rather, it was observed that such an issue could only be determined by the Civil Court in the wake of the evidence led by the parties.

Notice of motion for 17.10.2016.

Notice re:stay.

Process *dasti* as well with liberty to serve the respondents through their counsel before the trial Court. In the meanwhile, proceedings before the trial Court shall remain stayed till the adjourned date of hearing.

16.09.2016

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(ARUN PALLI)
JUDGE”

Dasti process was issued with a liberty to the petitioners to serve the respondents through their counsel appearing in the trial Court. Proceedings before the trial Court were stayed.

[2]. Interim order was made in operation vide order dated 01.11.2018 passed by this Court and respondents No.1 and 3 were allowed to be served by means of substituted service under Order 5 Rule 20 CPC.

[3]. Material on record would show that initially a suit for permanent injunction was filed by the plaintiffs/petitioners in the year 2006-07. The written statement was filed by the defendants only on 15.01.2015. The factum of fraud in respect of affairs of the company was pleaded and highlighted before the Company Law Board. Company Law Board vide its order dated 25.10.2013 relegated the plaintiffs to the remedy of civil suit as intricate questions of law and facts were involved before the Company Law Board. At the relevant time, since the suit filed by the plaintiffs was pending, therefore, the plaintiffs/petitioners thought it appropriate to amend the suit instead of filing fresh suit in view of cause of action accrued after the order dated 25.10.2013 passed by the Company Law Board.

[4]. The application under Order 6 Rule 17 CPC was filed in

the suit for permanent injunction already filed by the plaintiffs seeking to incorporate the factum of fraud in respect of affairs of the company as projected before the Company Law Board. The amendment was declined by the trial Court and the plaintiffs/petitioners have come in present revision petition against the said order.

[5]. As per record, respondents No.1 and 3 have been served by means of substituted service. Respondent No.2 has been served through its counsel appearing in the trial Court. There is no representation on behalf of the respondents despite service.

[6]. Faced with this situation, I proceed to hear learned counsel for the petitioners on merits.

[7]. In pursuance of order dated 18.12.2018, learned counsel for the petitioners has apprised this Court that the application under Order 6 Rule 17 CPC was filed by the plaintiffs/petitioners on 05.03.2015 i.e. after filing of the written statement by the defendants on 15.01.2015.

[8]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give 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.***

[9]. 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. It 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 is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies 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. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose 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.

[10]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not satisfied, the amendment cannot be allowed. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite

party for the delay and inconvenience caused to it. In a way it is intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment following principles are required to be taken into consideration:-

- a. Whether the amendment sought to be made is imperative for effective adjudication of the matter?
- b. Whether the amendment is *bona fide* or *mala fide*?
- c. The amendment should not cause such prejudice to the opposite party which cannot be compensated in terms of adequate cost.
- d. Whether the proposed amendment changes the nature and character of the suit?

As a Rule the Court should reject such amendments if fresh suit on intended cause of action is barred by limitation on the date of filing of application of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is

also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In ***Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27***, the Hon'ble Apex Court highlighted the aforesaid principles to be followed meticulously.

[11]. In ***Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481***, the Hon'ble Apex Court 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.***

[12]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in ***Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965***, held that if *prima facie* the

statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[13]. 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 *mala fide* in nature? 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 form. 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) reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite 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. 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. The Hon'ble Apex Court in ***Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078*** 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 Court must do full and complete justice between the parties subject to payment of adequate cost 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***.

[14]. For the reasons recorded hereinabove, this revision

petition is allowed. Impugned order is set aside. Normal consequences to follow.

14.03.2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No