

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

256/2)

Date of Decision: 04.02.2020

1)

CR no.6976 of 2015 (O&M)

Bhupinder Singh

...Petitioner

Versus

Partej Singh and another

....Respondents

2)

CR no.3651 of 2017 (O&M)

Partej Singh

...Petitioner

Versus

Bhupinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. G.S. Sandhu, Advocate, for the petitioner in
CR no.6976 of 2015 and
for respondent no.1 in CR no.3651 of 2017.

Mr. H.S. Dhindsa, Advocate
for the petitioner in CR no.3651 of 2017 and
for respondent no.1 in CR no.6976 of 2015.

Amol Rattan Singh, J. (Oral)

CR no.6976 of 2015

By this petition, the petitioner (defendant in the suit) challenges the order passed by the trial court on an application filed by the respondent-plaintiff under Order 6 Rule 17 of the CPC seeking to amend his plaint in various aspects, including the mode of payment alleged to have been made by the respondent-plaintiff to the petitioner in terms of an oral agreement of sale alleged to have been entered into between them, with the date of such oral agreement also sought to be amended, it having been given as April 30, 2004 in the original plaint, with it sought to be shown to be March 30, 2004 as per the amended plaint.

Both the learned counsel for the parties are unaware as to whether any reply to the said application was filed by the petitioner, which is also not discernible from the impugned order.

Be that as it may, the application has been allowed, with the trial court holding that the case was at its initial stage and therefore an amendment could be made at that stage, which may also “minimize the litigation” and consequently, subject to payment of Rs.1500/- as costs, the application was allowed and the plaint allowed to be amended.

Before this court learned counsel for the petitioner submits that the respondent -plaintiff having changed his entire stand as regards when the oral agreement took place between the parties, upon the petitioner having filed a written statement to the original plaint, stating therein that as a matter of fact on April 30, 2004 he was not in India but was in the USA, naturally it is only to fill up that lacunae that the respondent-plaintiff has sought to amend the plaint, thereby changing the date of the alleged oral agreement of sale to March 30, 2004.

He submits that hence the exercise is mala fide and should not have been allowed by the trial court.

He further submits that in the original plaint there was no mention of any witness to the agreement, with a witness also having been introduced only in the amended plaint.

Lastly, he submits that allowing the amendment in the plaint amounts to withdrawal of the admission of the plaintiff as regards the date of the original agreement.

Consequently, he submits that the entire nature of the plaint having been changed, the amendment should not have been allowed.

Mr. Dhindsa, learned counsel for the respondent-plaintiff, obviously supports the impugned order, to the effect that the application for an amendment having been filed on July 22, 2014 and allowed vide an order dated 09.09.2015, with the issues in the suit itself having been framed only on 22.12.2015, the trial court has not erred in allowing it, even in terms of what is contained in the provision itself, i.e. Order VI Rule 17 of the CPC.

Having considered the matter, first, the aforesaid provision is reproduced as follows:-

“Order VI Rule 17 Code of Civil Procedure :

17.Amendment of pleadings – *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

Provided 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.”

Consequently, as regards the right of a plaintiff to amend his plaint prior to even issues having been struck, obviously that cannot be in dispute.

No doubt what learned counsel for the petitioner has submitted otherwise does appeal to reason, to the effect that with the date of the alleged oral agreement itself having been changed only after the written

statement was filed by the petitioner, stating to the effect that on the date of agreement as given in the plaint (April 30, 2004), he was not even in India, it would seem strange that suddenly thereafter the respondent-plaintiff contended that it was actually a month earlier that the alleged oral agreement had been entered into, thereby in fact retracting from his original statement (referred to as admission by the learned counsel for the petitioner); however, naturally all those factors would need to be considered very carefully by the trial court at the time of deciding the suit itself on the basis of the evidence led, including any inferences to be taken against either party even in view of the amendment sought after a written statement had been filed by the petitioner.

However, as regards the amendment being allowed at the initial stage itself, I would see no reason to interfere with the impugned order, with this petition therefore dismissed. However, it is repeated that the trial court, at the time of passing judgment in the suit, would naturally examine all aspects of the case in the light of the evidence led before it, including the stage at which the amendment has been allowed, after the written statement was filed by the petitioner-defendant.

Having said that, the trial court would eventually consider the suit wholly on the basis of the evidence led before it by both the sides.

CR no.3651 of 2017

By this petition, the petitioner (plaintiff before the trial court) challenges the order passed by that court, dated 07.04.2017, by which his application seeking to submit his affidavit by way of examination-in-chief

in terms of what has been contended in the amended plaint, has been rejected, with the trial court holding that since operation of the order allowing the amendment, i.e. the order dated 09.09.2015, had been stayed by this court, the application could not be allowed.

Obviously what was being inferred by the trial court in its order was that with the amended plaint therefore not to be taken to be on record in terms of the interim order passed by this court, it was only the unamended plaint which could be seen to be the record of the suit, and consequently, no affidavit by way of examination-in-chief contrary to the pleadings on record could be allowed.

That being so, with the amendment in the plaint itself having been upheld by this court herein above, this petition is allowed, with the impugned order set aside, with the trial court directed to pass a fresh order on the application filed by the petitioner seeking to place on record his affidavit by way of examination-in-chief in terms of the amended plaint, with it again made clear that, naturally, the contents thereof are not being commented upon in any manner by this court.

04.02.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes