

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1432 of 2019

Date of Decision: 15.01.2020

Sharon Kalia alias Sharro Kalia

... Petitioner(s)

Versus

Sadhana Kalia

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Raja Bansal, Advocate
for the petitioner(s).

Mr. Jitin Sahni, Mr. Deepak Jain and
Mr. Himanshu Nagpal, Advocates
for the respondent.

Anil Kshetarpal, J.

Defendant/petitioner has filed the present revision petition against order dated 05.01.2019 passed by the learned Civil Judge (Junior Division), Gurugram allowing application for permission to amend the plaint. The operative portion of the order passed by the Court reads as under:-

10. After having heard both the parties and the proposed amendments and before considering the factual details and the materials placed by the applicant/plaintiff praying for amendment of the plaint, it is useful to refer Order 6 Rule 17 which is as under:-

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.”

Moreover, in Abdul Rehman v. Mohd. Ruldu : 2012(4) R.C.R. (Civil) 481, Hon'ble Apex Court, while dealing with the provisions of Order 6 Rule 17 CPC, held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation. It was further held that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The object of the rule is that Courts should try the merits

of the case that come before them and should, consequently, allow amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The Hon'ble Supreme Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.

12. This Court is of the considered view that the above observations are fully applicable to the facts and circumstances involved in the application in hand and following the same, it must be held that same deserves to be allowed as no prejudice will be caused to the parties if amendment in plaint is allowed. Present suit is at its initial stage of framing of issued. In interest of justice the present application of the defendant is allowed subject to payment of cost of Rs.2000/- paid to DLSA, Gurugram. Amended plaint already has been filed alongwith the amendment application.”

Learned counsel for the petitioner contends that this was the third application filed by the plaintiff seeking amendment. He further submits that the facts sought to be added by way of amendment are not in consonance with the original pleadings. He further submits that the learned Civil Judge (Junior Division) did not discuss the facts of the case while forming an opinion that the application is required to be allowed.

On the other hand, learned counsel for the respondent/plaintiff

trial Court, whereas second application was permitted to be withdrawn with liberty to file a fresh one.

Be that as it may, while allowing or dismissing application for amendment of the pleadings, the Court is required to appreciate the facts of the case and thereafter, take a decision as to whether the amendment sought is required to be allowed or not. The operative part of the order, extracted above, does not show that the learned trial Court, by discussing the facts of the case, formed an opinion thereupon.

Keeping in view the aforesaid facts, order dated 05.01.2019 is set aside. The learned trial Court is requested to re-decide the application after considering the facts available on file.

(Anil Kshetarpal)
Judge

January 15, 2020
“DK”

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