

CR No.1385 of 2020 (O&M)

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

CR No.1385 of 2020 (O&M)

Date of decision : 27.02.2020

Parminder Singh

... Petitioner

Versus

Varinder Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. H.S. Bedi, Advocate
for the petitioner.

Mr. G.S. Madaan, Advocate
for respondent No.1.

ALKA SARIN, J.

The present revision petition has been filed against the order dated 13.02.2020, whereby the application filed by the defendant-petitioner under Order 6 Rule 18 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'CPC'), has been dismissed.

In brief, the facts relevant to the present case are that an application for amendment of the plaint was filed by the plaintiff-respondent and the same was allowed vide order dated 30.07.2019 and thereafter, the case was adjourned to 09.09.2019 for filing of the amended plaint. Against the said order, the defendant-petitioner had approached this Court in CR No.5433 of 2019 and vide order dated 05.09.2019, the revision petition was disposed off, at the preliminary stage by modifying the order allowing the amendment of the plaint making it subject to payment of

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₹50,000/- as cost. On 09.09.2019 when the matter was fixed before the Trial Court for filing of the amended plaint, the order dated 05.09.2019 passed by this Court was handed over to the counsel for the plaintiff-respondent who made a statement that he had learnt about the order only on that date and that the plaintiff-respondent was not available in India. It was further stated by the counsel that the plaintiff-respondent was ready with the amended plaint, but the counsel for the defendant-petitioner raised an objection that the same can be taken on record only after deposit of ₹50,000/- as cost as imposed by this Court. Thereafter, the plaintiff-respondent filed a miscellaneous application bearing CM No.20416-CII of 2019 before this Court which was dismissed. He thereafter made a statement that he was ready to make a payment of ₹50,000/-, but the defendant-petitioner refused to accept the said amount. Thereafter, the defendant-petitioner filed an application under Order 6 Rule 18 CPC on the ground that since the time fixed by the Court for filing of the amended plaint was over, hence, the plaintiff-respondent should not be permitted to file the amended plaint. Meanwhile, the plaintiff-respondent also filed Special Leave Petition before the Apex Court and vide order dated 06.12.2019, the cost imposed by this Court was waived off. On 19.12.2019, the counsel for the defendant-petitioner had sought an adjournment on the ground that he wanted to seek the legal remedy for filing a review of the order dated 06.12.2019 passed by the Apex Court. Vide order dated 13.02.2020, the application under Order 6 Rule 18 CPC was dismissed. Hence, the present revision petition.

I have heard learned counsel for the defendant-petitioner as well as the counsel for the plaintiff-respondent, who is on caveat.

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It has been contended by learned counsel for the defendant-petitioner that since the time period fixed under Order 6 Rule 18 of CPC had expired, therefore, the amended plaint could not be taken on record. In support of his contentions, he has relied upon the judgments rendered in **“Sudhir Bhatia V/s Midas Hygiene Industries Pvt. Ltd.” 2007 (5) RCR (Civil) 474** and **“Ambrish Kumar Agarwal V/s Thakur Dass” 2015 (63) RCR (Civil) 642.**

Per contra, learned counsel for the caveator-respondent has submitted that the date fixed by the Trial Court for filing of the amended plaint was 09.09.2019, on which date, the plaintiff-respondent was ready with his amended plaint. However, on the said date an order dated 05.09.2019 passed by this Court was produced by the counsel for the defendant-petitioner, passed in CR No.5433 of 2019, whereby the order dated 30.07.2019 passed by the Trial Court allowing the amended plaint had been made subject to deposit of ₹50,000/- as cost. The said order was passed at the preliminary stage without issuing notice to the plaintiff-respondent and was produced for the first time in the Trial Court on 09.09.2019. On the said date, though the plaintiff-respondent was ready with the amended plaint, however, the filing of the amended plaint was objected to by counsel for the defendant-petitioner on the ground that the same could not be taken on the record without the payment of ₹50,000/- as cost. Since the plaintiff-respondent was not available in India at that point of time, the amended plaint was not filed. Thereafter, miscellaneous application bearing CM No. CM No.20416-CII of 2019 was filed by the plaintiff-respondent before this Court which was dismissed on 04.10.2019. On 04.10.2019 itself the matter was listed before the Trial Court and the

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plaintiff-respondent made a statement that he was ready with the cheque of ₹50,000/- towards cost. However, the defendant-petitioner refused to accept the said cheque and instead, moved the application under Order 6 Rule 18 of CPC.

It has further been contended that vide order dated 06.12.2019, the cost imposed by this Court vide order 05.09.2019 was also waived off.

In the present case, the admitted facts are that on 09.09.2019 i.e. the date fixed for filing the amended plaint, the plaintiff-respondent was ready with the amended plaint, however, the same was not taken on the record on an objection raised by counsel for the defendant-petitioner on the ground that cost had been imposed by this Court vide order dated 05.09.2019 and unless the cost was paid, the amended plaint could not be taken on the record.

It is also an admitted fact that subsequently, vide order 06.12.2019, the said cost had been waived off by the Apex Court. The judgments relied upon by learned counsel for the defendant-petitioner would not be of any benefit inasmuch as in the present case, the plaintiff-respondent was ready with the amended plaint on 09.09.2019 i.e. the date fixed by the Trial Court for filing the amended plaint. However, the amended plaint was not filed only because counsel for the defendant-petitioner objected to filing of the amended plaint on the ground that the same had been made subject to payment of ₹50,000/- as cost, by this Court vide order dated 05.09.2019. Admittedly, the order dated 05.09.2019 was passed at the preliminary stage and the counsel for the plaintiff-respondent was first made aware of this order only on 09.09.2019 on which date the plaintiff-respondent was not available in India. Thereafter, admittedly vide

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order dated 06.12.2019, the Apex Court had waived off the cost imposed vide order dated 05.09.2019, therefore, in view of the peculiar facts of the present case, there is absolutely no ground for interference in the order dated 13.02.2020 dismissing the application of the defendant-petitioner under Order 6 Rule 18 of CPC.

In view of the above, I do not find any merit in the present revision petition and hence, the same is dismissed.

27.02.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No