

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

128 (2 cases)

(1)

CR-1627-2022

Date of decision: 02.05.2022

M/s Batta Provisions Store and others

.....Petitioners

Versus

Darbari Lal died through his LRs and others

.....Respondents

(2)

CR-1628-2022

M/s Gopal Cycle Store and another

.....Petitioners

Versus

Darbari Lal died through his LRs and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep K. Sharma, Advocate
for the petitioners.

Mr. Gaurav Datta, Advocate and
Ms. Srishti Sharma, Advocate
for the caveators/respondents No.1(i) and 2.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above referred two revision petitions as the subject matter and proposed amendments in both the petitions are the same.

The instant revision petitions have been filed under Article 227 of the Constitution of India to impugn the order dated 18.02.2022 passed by the learned Civil Judge (Jr. Divn.), Amloh in Civil Suit No.437/05.09.2016 titled as 'M/s Gopal Cycle Store Vs. Darbari Lal died through LRs and others' and Civil Suit No.439/05.09.2016 titled as 'M/s Batta Provision Store and others Vs. Darbari Lal died through LRs and others' vide which an application filed under Order 6 Rule 17 CPC by the petitioner-plaintiff for amending the plaint was dismissed.

Learned counsel for the petitioners *inter alia* contends that while dismissing the application under Order 6 Rule 17 dated 14.02.2020 (Annexure P-4), the trial Court failed to appreciate that the proposed amendment was necessary for the effective adjudication of the real controversy between the parties. Learned counsel submits that it was on account of an accidental slip, the following averments were inadvertently made in the plaint:-

(i) that defendant No.1 is having a total of four shops including the shop in question and he had rented out three of those shops (para 2 of the plaint).

(ii) that the plaintiff took the shop in question orally, on rent from defendant No.1 in the year 1957 at a yearly rent (para 3 of the plaint).

(iii) that the plaintiff has been regularly paying the advance rent in the sum of Rs.300/- per annum to defendant No.1 besides also paying electricity charges of the electricity connection in question.

Learned counsel for the petitioners *inter alia* submits that as soon as the above mistake came to their knowledge, an application under Order 6 Rule 17 of CPC was moved to clarify the status of defendant No.1. Furthermore, the shop in question was in fact owned by M/s Sham Lal and Sons and the same had been taken on rent by the petitioners from them in the year 1957. Therefore, defendant No.1 was just an agent of M/s Sham Lal and sons, who used to collect rent on their behalf from the petitioners. Hence, by way of the above proposed amendments the petitioners just wanted to clarify the actual position, which would not in any manner amount to changing the nature or

complexion of the case. In support, learned counsel placed reliance upon *Abdul Rehman and another Vs. Mohd. Ruldu and others : 2012(4) RCR (Civil) 481; Mahila Ramkali Devi and others Vs. Nandram (D) through LRs and others : 2015(5) RCR (Civil) 562; Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and another : 1983 AIR (Supreme Court) 462; Kehar Singh Vs. Balraj Singh and others : 1991(2) RRR 306; Harbans Singh Batra Vs. Gurpreet Singh and another : 2012(1) PLJ 469 and Surender Kumar Sharma Vs. Makhan Singh : 2009(4) RCR (Civil) 597.*

Per contra, learned counsel for the caveators/respondents No.1(i) and 2 submits that the petitioners are wanting to withdraw their admissions made in the plaint by way of the proposed amendment. He submits that the application under Order 6 Rule 17 CPC has been moved at a highly belated stage when the trial has already commenced and a few plaintiff witnesses stand examined. He, thus, has vehemently opposed the submissions and the prayer of the counsel opposite. In support, he has placed reliance upon *Civil Appeal No.190 of 1976 titled as 'M/s Modi Spinning and Weaving Mills Co. Ltd. and another Vs. M/s Ladha Ram and Co.' decided on 23.09.1976; Civil Revision No.5151 of 2006 titled as 'Mukhtiar Vs. Union of India and others' decided on 13.05.2008 Civil Revision No.22 of 2014 titled as 'Ajmer Singh Vs. Girdhala and others' decided on 09.01.2014; C.R. No.194 of 1997 titled as 'Vaidhya Shyam Sunder Joshi Vs. Jain Vishwa Bharti Ladnu and others' decided on 05.03.1998; Lashkar Singh Vs. Bhulla Singh : 1998(2) RCR (Civil) 646; Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others : 2007(1)*

RCR (Civil) 481; B.K.N. Pillai Vs. P. Pillai : 2000(1) RCR (Civil) 511; Tarsem Singh Vs. Tarsem Lal : 1999(1) RCR (Civil) 640 and Heeralal Vs. Kalyan Mal : 1998(1) RCR (Civil) 140.

I have heard learned counsel for the parties and perused the relevant material placed on record.

Before proceeding further it would be apposite to reproduce the proposed amendments, which have been sought by the petitioners (in CR-1627-2022) in their application under Order 6 Rule 17 CPC and the same reads thus:-

"2. That M/s Shamlal and Sons in having total four shops including the shop in question and Shamlal and Sons rented out 3 shops on rent, one to the plaintiffs and two to other tenants and in one shop the defendants are doing their own business under the name and style of M/s Aggarwal Cycle Store and the defendants are controlling and managing the said business.

3. That the shop property in question is situated at Ground Floor of property no. #304, Sector 3-C, Main Bazar, Mandi Gobindgarh, Tehsil Amloh District Fatehgarh Sahib, as mentioned in the heading of the plaint. The plaintiffs orally took the shop property in question from M/s Shamlal and Sons in the year of 1957 at a yearly rent and it was settled between them that the plaintiffs will pay the rent regularly in advance for the next year and the plaintiffs have to pay the electricity charges of the electricity connection on question. The plaintiffs started their business in the shop in question under the name and style of M/s Batta General/Provision Store. Copy of site plan duly signed by the plaintiffs and photographs of the shop property are attached herewith. The rate of rent was increased from time and time and at present the rate of rent is Rs.300/-P.A.

4. That the plaintiffs have regularly paid advance rent of Rs.300/- per year to M/s Shamlal and Sons and the same was received by defendant no.1 on behalf of M/s Shamlal and Sons and the plaintiffs also paid electricity charges of electricity connection in question. Previously defendant no.1 on behalf of Ms Shamlal and Sons used to issue receipts to the plaintiffs but thereafter he did not issue any receipt to the plaintiffs. The said receipts were written by defendant no.1 with his own hands and on the letter pad of Aggarwal Cycle store for M/s Shamlal and Sons. The

plaintiffs have already paid advance rent uptill August, 2016 to defendant no.1 for Shamlal and Sons and also paid electricity bill. Photostat copies of previous rent receipts and copy of bill are attached herewith, which may be read as part this plaint. The remaining rent receipts will be produced at the time of evidence.

4-A That in the year 1970, Rent petition no.1 of 1.1.1970 titled as Shamlal and Sons through Anad Sarup Vs Charanli Lal, Megraj Sons of Rikhi Ram for ejectment was filed in the court of the Ld. Rent Controller, Amoh with regard to shop in dispute. Vide judgment dated 24.6.1971, Ld. Rent Controller, Amloh dismissed the petition on the ground that petitioner Anand Sarup has not proved himself to be partner of the firm M/s Sham Lal and sons, which is the owner of the shop in dispute. Sh. Anand Sarup who filed the said ejectment petition is father of defendant no.1 Darbari Lal and grand father of defendant no.2 Anil Kumar. Meaning thereby the successor in interest of the defendants was neither owner nor the landlord of the shop in dispute. The name of M/s Sham Lal and Sons also finds mentioned in the TSI in the column of ownership. The plaintiffs paid the rent to M/s Sham Lal and Sons and defendant no.1 Darbari Lal collected the rent from the plaintiffs for M/s Sham Lal and Sons through receipts. The copy of the judgment dated 24.6.1971 is attached herewith."

The proposed amendments, which have been sought by the petitioners (in CR-1628-2022) in their application under Order 6 Rule 17 CPC, read as under:-

"2. That M/s Shamlal and Sons in having total four shops including the shop in question and Shamlal and Sons rented out 3 shops on rent, one to the plaintiffs and two to other tenants and in one shop the defendants are doing their own business under the name and style of M/s Aggarwal Cycle Store and the defendants are controlling and managing the said business.

3. That the shop property in question is situated at Ground Floor of property no. #305, Sector 3-C, Main Bazar, Mandi Gobindgarh, Tehsil Amloh District Fatehgarh Sahib, as mentioned in the heading of the plaint. The plaintiffs orally took the shop property in question from M/s Shamlal and Sons in the year of 1957 at a yearly rent and it was settled between them that the plaintiffs will pay the rent regularly in advance for the next year and the plaintiffs have to pay the electricity charges of the electricity connection on question. The plaintiffs started their business in the shop in question under the name and

style of M/s Gopal Cycle Store. Copy of site plan duly signed by the plaintiffs and photographs of the shop property are attached herewith. The rate of rent was increased from time and time and at present the rate of rent is Rs.300/-P.A.

4. That the plaintiffs have regularly paid advance rent of Rs.300/- per year to M/s Shamlal and Sons and the same was received by defendant no.1 on behalf of M/s Shamlal and Sons and the plaintiffs also paid electricity charges of electricity connection in question. Previously defendant no.1 on behalf of Ms Shamlal and Sons used to issue receipts to the plaintiffs but thereafter he did not issue any receipt to the plaintiffs. The said receipts were written by defendant no.1 with his own hands and on the letter pad of Aggarwal Cycle store for M/s Shamlal and Sons. The plaintiffs have already paid advance rent uptill August, 2016 to defendant no.1 for Shamlal and Sons and also paid electricity bill. Photostat copies of previous rent receipts and copy of bill are attached herewith, which may be read as part this plaint. The remaining rent receipts will be produced at the time of evidence.

4-A That in the year 1970, Rent petition no.1 of 1.1.1970 titled as Shamlal and Sons through Anad Sarup Vs Charanji Lal, Megraj Sons of Rikhi Ram for ejectment was filed in the court of the Ld. Rent Controller, Amoh with regard to shop in dispute. Vide judgment dated 24.6.1971, Ld. Rent Controller, Amloh dismissed the petition on the ground that petitioner Anand Sarup has not proved himself to be partner of the firm M/s Sham Lal and sons, which is the owner of the shop in dispute. Sh. Anand Sarup who filed the said ejectment petition is father of defendant no.1 Darbari Lal and grand father of defendant no.2 Anil Kumar. Meaning thereby the successor in interest of the defendants was neither owner nor the landlord of the shop in dispute. The name of M/s Sham Lal and Sons also finds mentioned in the TSI in the column of ownership. The plaintiffs paid the rent to M/s Sham Lal and Sons and defendant no.1 Darbari Lal collected the rent from the plaintiffs for M/s Sham Lal and Sons through receipts. The shop in occupation of the plaintiffs is also property of M/s Sham Lal and Sons. The defendants are deriving their right, title and interest through their predecessor in interest Sh. Anand Sarup. The copy of the judgment dated 24.6.1971 is attached herewith."

No doubt, the Courts should be liberal in allowing all such amendments in the pleadings which would be necessary for the determination of the real controversy between the parties, however, at

the same time the Courts cannot turn a blind eye and must be alive to any prejudice or injustice which might be caused to the other party by the proposed amendments. Order 6 Rule 17 CPC reads as thus:-

"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."

A bare reading of the proviso to Order 6 Rule 17 CPC makes it abundantly clear that once the trial has commenced, amendment of pleadings should not be allowed unless and until the party seeking such amendment is able to show that despite due diligence, the proposed amendment could not have been brought-forth earlier or raised before the commencement of the trial.

Adverting to the case in hand, admittedly, the trial in the present case commenced way back in the year 2016. After the issues had been framed, some witnesses on behalf of the petitioners too had been examined. The application under Order 6 Rule 17 CPC was moved after some of the witnesses on behalf of the petitioners had been examined.

The petitioners have miserably failed to satisfy this Court as to why they were unable to seek the proposed amendments before the commencement of the trial. The said facts were already in the knowledge of the petitioners at the time of filing of the suit, therefore, it cannot be digested that due to inadvertence or accidental slip, the

aforementioned facts which the petitioners are now trying to raise by way of the proposed amendment, could not be mentioned in the plaint. This Court, thus, does not concur with the submissions made by learned counsel for the petitioners that the proposed amendment is nothing but a clarification of the averments already made in the plaint by them. Furthermore, para No.4A which is now being sought to be added by way of the proposed amendment would without a doubt change the entire nature and complexion of the suit and resultantly displace the case of the defendants as pleaded by them in their written statement.

In the wake of the aforementioned facts and circumstances, the petitioners did not act diligently and still further the proposed amendment of the plaint cannot be allowed at this belated stage as it would be highly prejudicial to the defendants.

As a sequel to the above, this Court is not inclined to exercise its revisional jurisdiction to set aside the impugned order dated 18.02.2022.

Dismissed.

02.05.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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