

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

CR-1078-2021 (O&M)

Date of decision: 21.11.2022

Smt. Chand Bhayana

....Petitioner

Versus

Shri Bhupesh Bhayana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Himanshu Arora, Advocate for the petitioner

Mr. Lalit Kumar Narang, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

The defendant in a plaintiff's suit for grant of permanent injunction is the petitioner herein. Her application to amend the issues already framed by the court on 20th July, 2019 has been dismissed on 24th February, 2021. The operative part of the order reads as under:-

“7. The perusal of these provisions show that by way of this application, the applicant is seeking that the court should amend or strike out the issues, already framed vide order dated 20.7.2019. The grievance of the applicant is that issues submitted on his behalf as draft issues were not quoted as it is by the court while framing the issues. Now, he is seeking amendment of issues, but perhaps with the hope that this court should sit and review its own order dated 20.7.2019. But, technically it is not an application for the purpose of review. Considering the provisions under which it is moved, it is not provided as to which new issue he wants to get added/alterd, in the existing one, by way of which an amendment could be brought, so as to serve those ends which could not be served by the existing issues on record. Rather, he is trying to tutor the court regarding the relevant provisions, which is highly unacceptable, as they are inapplicable to the facts of the present case. It seems that the applicant is misguided, as the authorities quoted by him pertain

to revision of orders of subordinate courts, and none relates to power of review of its own order. The applicant, if aggrieved by the order dated 20.7.2019, could have gone for challenging the same, on the basis of the law cited by him, instead of moving the present application, without suggesting any necessity for amendment in the existing issues. As such the application, being totally misconceived is hereby dismissed with costs of Rs.2000/- payable in favour of DLSA, Meham.”

Through this revision petition, the petitioner assails the correctness of the aforesaid order.

Heard the learned counsel representing the parties at length and with their assistance perused the paperbook. As per Order XIV Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) each material proposition, affirmed by one party and denied by the other, is required to form the subject matter of a distinct issue. Sub rule 4 of Order XIV Rule 1 CPC provides that issues are of two kinds:-

- a) issue of fact
- b) issue of law

Order XIV Rule 5 CPC enables the court to amend or strike off the issues at any point of time. It includes the power to frame an additional issue. The issues are culled out in order to identify the points of controversy between the parties, arising for adjudication of the court. These issues guide the parties in leading necessary evidence. Thus, framing of issues is a crucial part of the trial, which helps the court to proceed in the right direction and pass a reasoned judgment. From the reading of the impugned order, it is evident that the Presiding Judge of

the trial court has failed to comprehend the scope of Order XIV Rule 1 CPC. While praying for deleting an issue or framing an additional issue, the party does not call upon the court to review its previous order. Moreover, it was not appropriate for the court to observe that the counsel is trying to tutor the court. Learned counsel representing the parties are there to assist the court in arriving at a correct conclusion. No one can claim that he or she is the Master of law. All serving in the field of law, including a Judge are students of law, which is ever-evolving. The members of the Bar play an important role in the proper administration of justice. It is expected from the Bar and Bench to work with mutual respect and harmony in order to strengthen the process of delivering justice. In such circumstances, the observations made by the court in the impugned order were not called for.

Without expressing any opinion on the merits of the case, the order under challenge is set aside. The trial court is directed to decide afresh the application under Order XIV Rule 5 CPC.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

21.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE