

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-2344-2022  
Decided on : 04.07.2022

Bhagirath @ Bhaga (deceased) thr. LRs ..... Petitioners

Versus

Ranjit Singh and others ..... Respondents

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. P.K.Ganga, Advocate  
for the petitioners.

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**Manjari Nehru Kaul, J.(Oral)**

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 12.05.2022 (Annexure P-5) whereby an application under Section 6 Rule 17 CPC filed by the petitioners for amendment of written statement was dismissed.

Learned counsel for the petitioners submits that the impugned order is repugnant to the settled principle of law regarding amendment of pleadings. He submits that after the death of Bhagirath @ Bhaga Ram, the petitioners have been impleaded as his legal heirs. After putting in an appearance before the trial Court, the petitioners learnt that the written statement filed by Bhagirath @ Bhaga Ram suffered from some deficiency and therefore, they moved an application for amendment of the written statement to incorporate certain relevant facts, which would in turn clarify the real and actual facts before the trial Court. Learned counsel further submits that proposed amendment is necessary for just and effective

adjudication of the case, which the trial Court failed to appreciate. He further more submits that written statement can be amended at any stage of trial and cannot be denied as the same is a valuable right of the defendant. Learned counsel still further submits that since the trial is at initial stage, no prejudice would be caused to the respondent in any manner if the amendment is allowed. In support of his submissions, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Usha Balashaheb Swami and others versus Kiran Appaso Swami and others (Civil Appeal No.2019 of 2007) decided on 18.04.2007*** and of the Coordinate Bench of this Court in ***Mahi Pal and another vs. Sohan Devi and others (CR No.665 of 2016) decided on 02.06.2016 and Ram Parshad through his LRs Manoj and others vs. Rattan Lal and others (CR No.6208 of 2015) decided on 18.09.2017.***

Heard learned counsel for the petitioners and perused the relevant material available on record.

It would be apposite to observe here that there can be no doubt that the Courts should adopt a liberal approach in allowing such amendments of pleadings, which may be necessary for a just and effective adjudication of the dispute between the parties. This Court is also conscious that the Courts should not permit the administration of justice to be obstructed by a hyper technical approach while adjudicating upon the questions of amendment of pleadings. However, at the same time, the Courts cannot be expected to turn a blind eye and rather must stay alive to any prejudice or injustice, which could be caused to the opposite party while deciding an application for amendment of pleadings.

It would be relevant to reproduce Order 6 Rule 17 CPC, which is as follows:

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

Hon'ble Supreme Court in ***Vidyabai and others vs. Padmalatha and another, 2009(2) SCC 409*** has held as under:

*“14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.*

*However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of*

*this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”*

Hon'ble Supreme Court in ***Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530*** has also held as under:

*"27. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”*

Adverting to the case in hand, the application under Order 6 Rule 17 CPC has been moved at a highly belated stage i.e. after the commencement of the trial as admittedly, most of the plaintiff's witnesses stand examined. The petitioners have miserably failed to satisfy this Court as to why the proposed amendment was not sought before the commencement of the trial, more so, when the said facts were already in the knowledge of defendant-Bhagirath as well as the petitioners. Thus, allowing any amendment at this stage would be highly prejudicial to the respondents.

The judgments relied upon by the learned counsel for the

petitioners would not come to his rescue as none of them disputes the settled position of law qua the proviso to Order 6 Rule 17. The facts of the judgment rendered by the Hon'ble Supreme Court in *Usha Balashaheb Swami's case(supra)* are distinguishable as the trial had not commenced in that case to attract the proviso to Order 6 Rule 17.

Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)  
JUDGE

04.07.2022  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable :       | Yes/No |