

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

CR 5744/2019

Date of decision: 16/11/2022

Sanjeev Kumar Galhotra and another

.....Petitioners

Vs.

Surender Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Namit Khurana, Advocate for the petitioners.

Mr. Pankaj Gupta, Advocate for the respondents.

Nidhi Gupta,J.

This revision petition under Article 227 of the Constitution has been filed by the plaintiffs/petitioners for setting aside the order dated 19.8.2019 (Annexure P-5) passed by learned Civil judge (Senior Division) Yamuna Nagar in Civil Suit No. 704/2015 whereby their application for amendment of the plaint has been dismissed.

Brief facts of the case are that the plaintiffs/petitioners filed a suit for specific performance of the agreement to sell dated 13.9.2014 in respect of SCF No. 23, measuring 100 square yards, as fully described in

the head note of the plaint (Annexure P-1) at page 12 of the paper book. During the pendency of the suit, it came to the notice of the plaintiffs/petitioners that due to a typographical error, the agreement to sell in question had inadvertently been described as dated '12.9.2004'; whereas in fact it had been stamped and executed between the parties on 13.9.2004. As such, due to inadvertent, bona fide mistake on the part of the Computer Typist/ Scribe, the date was wrongly typed as 12.9.2004 on said agreement to sell, instead of actual date i.e. 13.9.2004. Hence plaintiffs/petitioners moved an application under Order 6 Rule 17 CPC before the Id. Trial Court for amendment of the plaint only to that extent, that date of agreement be corrected. Reply to the said application was duly filed by the defendants/respondents before the trial Court on 13.5.2019 (Annexure P-4).

After hearing the learned counsel for the parties the learned trial Court dismissed the said application inter alia on the grounds that (a) evidence of the Scribe/Computer Typist was not available on the case file; (b) in pursuance of the aforesaid agreement to sell, plaintiffs had executed an affidavit before the Sub-Registrar wherein date of agreement has been mentioned in para 2 as 12.9.2004; (c) even in legal notice Ex.P-16 issued on behalf of the plaintiffs, the date of agreement to sell is mentioned as 12.9.2004; (d) plaintiffs had ample time to know the aforesaid alleged mistake even before filing of the suit; and (e) in this view of the matter plaintiffs are not entitled to get the relief of amendment of the plaint.

Learned counsel for the plaintiffs/petitioners has vehemently argued before this Court that the error in the mentioning of the date as 12.9.2004 was inadvertent and bona fide mistake on the part of the Scribe, which mistake came to the notice of the plaintiffs only at the time of deposition. Further, the record amply demonstrates that the agreement to sell was stamped and executed on 13.9.2004. It is further submitted that the suit is at the stage of plaintiffs' evidence and defence evidence will remain the same and no prejudice would be caused to the respondents/defendants in case the amendment of the plaint to this limited extent as prayed for, is allowed.

In response learned counsel for the respondents has relied upon proviso to Order 6 Rule 17 CPC, which is reproduced as under:-

“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.”

It is submitted by the learned counsel for the defendants/respondents that proviso as above, does not permit amendment of the plaint once the trial has commenced. Further submits that even if no prejudice is caused to the defendants the present application has been filed after four years - inasmuch as the civil suit was filed in the year 2015 whereas the application for amendment of the plaint has been filed only in the year 2019; and if the present amendment is allowed then the whole proceedings in the civil suit will be delayed as the proceedings will have to be conducted afresh. It is further submitted that plaintiffs/petitioners will have many opportunities to prove this document during the course of evidence through various means, and as such, present amendment is not necessary.

In response, learned counsel for the plaintiffs/petitioners relies upon judgment rendered by Hon'ble Supreme Court in **Varun Pahwa v Mrs. Renu Chaudhary 2019 (2) RCR (Civil) 383** and submits that even in the relied upon case, the plaintiff therein had sought amendment of the plaint at the stage when evidence was being led between the parties, and the Hon'ble Supreme Court had allowed the said amendment in the following terms: -

“9. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings

cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. In *State of Maharashtra v Hindustan Construction Company Limited*, 2010(2) RCR (Civil) 614: (2010)4 SCC 518 this Court held as under:-

“17. Insofar as the Code of Civil Procedure, 1908 (for short “CPC”) is concerned, Order 6, Rule 17 provides for amendment of pleadings. It says that 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.”

Counsel for the plaintiffs/petitioners has also relied upon judgment of the Hon’ble Supreme Court in **Life Insurance Corporation of India v Sanjeev builders Private Limited and another: Law Finder Doc Id #2029338**.

Heard learned counsel for the parties.

I find merit in the submissions advanced by the learned counsel for the plaintiffs/petitioners. The amendment sought is purely the correction of an inadvertent and bona fide typographical

error, and is not a substantive amendment that will have any irreversible bearing on the rights of the parties. As held by the Hon'ble Supreme Court, an amendment can be allowed at any stage of the proceedings in fact, even after the decision of the civil suit. Admittedly, in the present case the trial is at the stage of plaintiffs' evidence. The amendment sought herein is only with regard to the date of execution of the agreement to sell and as such, will not cause any injustice or injury to the defendants.

Accordingly, with a view to do substantive justice between the parties, the present revision petition is allowed, impugned order dated 19.8.2019 (P-5) passed by the trial court is set aside; and the application under Order 6 Rule 17 CPC moved by the plaintiffs/ petitioner is allowed, and the petitioner is permitted to make the amendment.

Pending application(s),if any also stand disposed of.

(Nidhi Gupta)
Judge

November 16,2022.
Joshi

Whether speaking/reasoned

Yes

Whether reportable

Yes/No