

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

CR-4347-2022
Decided on : 10.10.2022

Basic Developers Pvt. Ltd.

..... Petitioner

Versus

Logical Developers Pvt. Ltd.

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.R.Yadav, Advocate
 for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.09.2022 (Annexure P-4) passed by Addl. District Judge, Gurugram vide which application for amendment of plaint filed by the petitioner was dismissed.

Learned counsel for the petitioner while drawing the attention of this Court to the impugned order submits that it is patently erroneous and contrary to the settled principles of law pertaining to amendment of pleadings. He submits that the Lower Appellate Court failed to appreciate that pleadings could be amended at any stage and mere delay in seeking an amendment could not by itself be a ground to dismiss an application under Order 6 Rule 17 CPC. Learned counsel has further urged that it was on account of a bonafide clerical error that the interest on the principal amount was sought from “the date of filing of suit instead of from the date when the payment became due”.

While inviting the attention of this Court to the plaint (Annexure P-2) as well as legal notice sent by the petitioner annexed as

Annexure P-5 learned counsel has submitted that the foundation of the pleadings proposed to be incorporated by way of an amendment was already there in the plaint as it categorically stood mentioned that the legal notice (Annexure P-5) had been served upon the respondent wherein the petitioner had asked for interest on the principal amount from the date when the payment became due. Learned counsel has also submitted that even the Court fee has been affixed on the basis of the interest calculated from the date of payment. He submits that the proposed amendment would not in any manner cause any prejudice to the case of the respondent rather it would help in the effective adjudication of the dispute between the parties and also prevent multiplicity of proceedings. In support, learned counsel has placed reliance upon the judgment of Hon'ble Apex Court in ***Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481.***

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

There is no dispute qua the settled position of law that amendment of pleadings can be allowed at any stage of the proceedings. However, 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 shows that despite exercise of due diligence, the proposed amendment could not have been sought for 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 petitioner is seeking amendment on the ground that due to inadvertence the interest on the principal amount was not sought from the date when the payment became due. It would be relevant to point out that the suit of the petitioner was decreed vide judgment and decree dated 11.02.2016. Thereafter, an appeal

was preferred to impugn the aforesaid judgment and decree, on 17.03.2016. It was during the pendency of the appeal, application under Order 6 Rule 17 CPC for amendment of the plaint was moved by the petitioner, and that too after six years i.e. on 10.05.2022. There is nothing on record much less any averment by the petitioner to show as to what prevented him from seeking the amendment in question, prior to the commencement of the trial or for that matter even before the conclusion of the trial. It is highly unbelievable that the petitioner would not have been aware about the “bonafide clerical error” all these years, more so, when it is a matter of record that he was duly represented by a counsel all throughout during the trial.

Further more, in case the proposed amendment is allowed at this stage, it would without a doubt, be highly prejudicial to the case of the respondent.

The case law relied upon by the learned counsel for the petitioner would not come to his aid as in the instant case the petitioner has miserably failed to satisfy that despite exercise of due diligence the proposed amendment could not have been sought by him earlier.

This Court has no hesitation in observing that the impugned order does not suffer from any illegality or material irregularity.

Accordingly, instant petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

10.10.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No