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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4825 of 2022 (O&M)
Date of decision: 08.12.2022

Bhupinder Singh and another

..... Petitioners

versus

Hardev Singh and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Harminder Singh, Advocate
for the petitioners.

MANJARI NEHRU KAUL J. (Oral)

The petitioners have filed the present petition under Article 227 of the Constitution of India for setting aside the order dated 29.09.2022 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Batala vide which an application filed by them under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint, was dismissed.

Learned counsel for the petitioners *inter alia* submits that the trial Court while passing the impugned order failed to appreciate that the proposed amendments are necessary to elucidate and elaborate the stand already taken by the petitioners in the plaint. He further submits that the counsel for the petitioners while preparing the case, felt the necessity to amend the plaint and since foundation of the facts sought to be incorporated by way of the proposed amendment already exist in the plaint, i.e., the factum of partition on the basis of

the *Salasnamna* dated 09.11.2003, the respondents would not be in any manner adversely affected by the proposed amendment.

Learned counsel still further submits that though the *Salasnama* had been duly attested by all the parties including the respondents, however, its execution had been disputed by the respondents in the written statement. Hence, in the circumstances, the proposed amendment would be necessary for the just and effective adjudication of the dispute between the parties. In support thereof, learned counsel for the petitioners has relied upon judgments of Hon'ble the Supreme Court passed in “***Prithi Pal Singh and another vs. Amrik Singh and others***”, 2013(9) SCC 576; “***Mahila Ramkali Devi and others vs. Nandram (D) Thr. Lrs and others***”, 2015(3)SCC 132; “***Varun Pahwa vs. Mrs. Renu Chaudhary***”, 2019(2) RCR (Civil) 383; “***State of Bihar and others vs. Modern Tent House and anr***”, 2017(8) SCC 567; “***M/s Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal***”, 2017(5) SCC 212 and “***Mount Mary Enterprises vs. M/s Jivratna Medi Treat Pvt. Ltd.***”, 2015(4) SCC 182.

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

Before proceeding further, 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.”

It is perspicuous from a bare reading of the proviso to Order 6 Rule 17 CPC that once the trial has commenced, amendment of pleadings should not ordinarily be allowed unless and until the parties seeking such amendment are able to show that despite exercise of due diligence, the proposed amendment could not have been sought before the commencement of the trial.

Hon'ble the Supreme Court in ***Salem Advocate Bar Association vs. Union of India***, 2005 (3) RCR (Civil) 530 has 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.”

Further, in ***Vidyabai and others vs. Padmalatha and another***, 2009(2) SCC 409, the Hon'ble Supreme Court has also 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 herein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.”

Undoubtedly, the Courts should adopt a liberal approach in allowing all such amendment of pleadings which may be necessary for just and effective adjudication of the dispute between the parties, however, at the same time, the Courts cannot be expected to turn a blind eye to any prejudice or injustice which could be caused to the opposite party while allowing any such amendment of pleadings.

Adverting to the instant case, the application under Order 6 Rule 17 CPC was moved by the petitioners when the defendants' evidence was under way, i.e., much after the commencement of the trial.

The petitioners have not even put forth any satisfactory explanation while moving the application under Order 6 Rule 17 CPC as to why the proposed amendment was not sought earlier, more so, when admittedly all the facts were well within their knowledge at the time of the institution of the suit. Merely because the counsel representing them before the trial Court felt the need to seek amendment while preparing the case would not be a sufficient ground to allow the application, rather, it clearly shows lack of exercise of due diligence. Thus, allowing any amendment at such a belated stage, when the trial is on the verge of conclusion, would definitely be prejudicial to the opposite party.

The case laws relied upon by learned counsel for the petitioners would not come to his rescue as the petitioners have miserably failed to satisfy

this Court as to why the proposed amendment could not be sought prior to the commencement of trial despite exercise of due diligence.

This Court is therefore not inclined to invoke its revisional jurisdiction under Article 227 of the Constitution of India. The instant petition, being devoid of any merit, is dismissed.

08.12.2022
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(MANJARI NEHRU KAUL)
JUDGE

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