

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4878 of 2022
Date of decision : 31.10.2022

Rajdeep Singh

... Petitioner

Versus

Master Rajsher Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Aashish Chopra, Sr. Advocate assisted by
Mr. Gagandeep Singh, Advocate
for the petitioner.
Ms. Shubreet Kaur, Advocate
for the respondent.

HARKESH MANUJA, J. (ORAL)

Present Civil Revision has been filed against an order dated 13.09.2022 (Annexure P-1) passed by the learned Additional Principal Judge, Family Court, Patiala, whereby prayer made by respondent-plaintiff for seeking amendment of plaint in Civil Suit No.21 of 2019 has been allowed.

The facts leading to the present case are that respondent-plaintiff filed a petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 praying for grant of maintenance @ Rs.50,000/- per month being the son of petitioner-plaintiff. At the stage of recording of rebuttal evidence and final arguments an application came to be filed at the instance of respondent/plaintiff seeking two fold amendment of plaint. The amendment sought for is reproduced here for reference:-

“(a) That in the plaint, in heading, the claim, made by the plaintiff @Rs. 50,000/- per month, may kindly be allowed to be

changed/substituted as Rs. 1,50,000/- per month. Similarly in para No. 25 of the plaint as well as in the prayer clause of the plaint, the figure of Rs. 50,000/- per month may kindly be allowed to be changed/substituted with the figure of Rs. 1,50,000/- per month.

(b) That the applicant/plaintiff may be allowed to add para No. 24-A as under:- 24-A. That on 11.1.2020 in the absence of the plaintiff and his mother, the defendant alongwith one lady, his father, Manager Gurcharan Singh and Pawan Kumar trespassed in the house of plaintiff at Lehal Colony, Patiala, where he has been restrained to enter by the court, where the proceedings for domestic violence is pending. The defendant and his henchmen broke open the lock of the house and trespassed, when the mother of the applicant was informed about this, she was in Chandigarh, she immediately started for Patiala with the plaintiff and thereafter she also lodged a complaint with the police of P.S. Civil Lines, Patiala. The defendant, who as stated above, is a wealthy person, bribed the police and the police let the said lady go and registered a very weak case against the defendant. The defendant forgot a diary maintained by him in the house of the mother of plaintiff at Lehal Colony, Patiala, which contains the income of the defendant. The said original diary has been produced in the case, where proceedings of domestic violence is pending by way of additional evidence, and copy of diary is enclosed herewith.”

A perusal of the aforementioned contents shows that by way of amendment the respondent-plaintiff wanted to increase the claim in the prayer clause from Rs.50,000/- per month to Rs.1,50,000/- per month besides pleading the factum of a diary allegedly belonging to the petitioner-defendant pertaining to details of his income etc. Objections to the amendment application were filed by the petitioner-defendant. Learned trial Court vide impugned order dated 13.09.2022 (Annexure P-1) allowed the

amendment prayed for at the instance of respondent-plaintiff. It is the said order which has been impugned by way of present revision petition.

Learned Senior Counsel Mr. Aashish Chopra, assisted by Mr. Gagandeep Singh, Advocate, vehemently submits that the contents regarding the alleged diary belonging to the petitioner admittedly came to the notice of respondent/plaintiff in December 2020 whereas the application in hand was filed only in July 2022 which apparently shows that there was no due diligence on his part while pursuing his litigation. He also submits that the inordinate delay in seeking amendment on the part of respondent-plaintiff does not even appear to be bona fide. Learned counsel for the petitioner also challenges the impugned order by submitting that learned Court below has failed to deal with the contentions raised on behalf of his client.

Notice of motion.

At this stage, Ms. Shubreet Kaur, Advocate appears and accepts notice on behalf of respondent-plaintiff and files her memo of appearance with an undertaking to file her power of attorney within a period of 2 weeks' from today.

Learned counsel for respondent-plaintiff submits that the impugned order was passed on 13.09.2022, permitting his client to file amended plaint. She further submits that in pursuance thereof, the amended plaint was filed on 16.09.2022 and thereafter the petitioner-defendant had even filed his written statement to the same on 19.09.2022. Referring to the aforesaid, she submits that once the petitioner-defendant had already submitted his written statement to the amended plaint, which has already been taken on record, he is now estopped from challenging the

validity of order dated 13.09.2022 which already stands acted upon in the trial. Learned counsel for respondent-plaintiff further submits that based on the amended pleadings, even examination-in-chief of four of his witnesses already stand recorded on 17.10.2022 and the matter has now been fixed today for recording of the remaining evidence.

I have heard learned counsel for the parties and gone through the paper book, I do not find much substance in the submissions made on behalf of the petitioner-defendant. Though, there is some delay in moving an application for seeking amendment of plaint at the instance of respondent-plaintiff, however, considering the fact that the dispute in the present case pertains to grant of maintenance in favour of a minor child belonging to the petitioner, I refrain myself from adopting a hyper-technical approach while construing due diligence against him who is pursuing through his guardian. The issue pertaining to maintenance cannot be equated with the civil disputes relating to rights involving properties, as more of human and emotional aspect is involved to these proceedings. More than that, the disputes relating to maintenance or even for that matter custody issues are always treated to be dynamic and not statics as the cause of action including the rights relating to the parties goes on evolving with the passage of time and change of circumstances as well with the discovery of additional facts/evidence. It appears that the amendment sought to be carried out will bring true and correct position before the trial Court regarding income of the petitioner and the same shall help the trial Court to decide the dispute more effectively. The amendment sought for is neither going to change the cause of action; nor even the nature of the

claim, rather it may be necessary to avoid multiplicity of litigation between the parties.

Besides it, the most important peculiar and distinctive subsequent event which has taken place in this case is the filing of written statement at the instance of petitioner-defendant in pursuance to the amended plaint and even examination-in-chief of four of the witnesses of respondent-plaintiff which already stand recorded.

Considering the aforesaid fact and circumstances, I deem it appropriate not to interfere in the impugned order. Resultantly, the present petition is hereby *dismissed*.

However, it is made clear that the respondent-plaintiff shall restrict her evidence only qua the amendment allowed by the learned trial Court vide order dated 13.09.2022.

October 31, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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