

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

CR-6905-2019 (O&M)
Date of Decision: November 09, 2022

All India Food & Allied Worker's Union, Malerkotla ...Petitioner

Versus

Khushi Mohammad and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Deepak Verma, Advocate for petitioner/ plaintiff No.1.
Mr. G.N. Malik, Advocate for respondent No.1/ defendant No.1.

HARKESH MANUJA, J.

By way of present revision petition, challenge has been made to an order dated 10.09.2019 (P-5) passed by the Court of Civil Judge, (Junior Division), Malerkotla; whereby an application seeking permission to amend the plaint filed at the instance of petitioner/ plaintiff No.1 (hereinafter referred to as 'the petitioner') has been declined.

The facts of the present case are that a suit for permanent injunction was filed at the instance of petitioner as well as respondents No.7 to 9 with a prayer for restraining respondent Nos.1 to 6/ defendant Nos. 1 to 6 from illegally and forcibly dispossessing them from the suit property as detailed in the head note of the plaint. In the plaint, petitioner has been represented through Mohan Yadav, son of Sh. Sikander Yadav stating him to be its President.

In the written statement, respondent No.1/ defendant No.1 (hereinafter referred to as 'respondent No.1') besides other contesting defendants raised an objection that Mohan Yadav, son of Sikander Yadav was not an authorized person to represent petitioner and there was no

resolution passed in his favour in this regard and as such the suit filed through him was not maintainable.

Issues in the suit were framed on 08.05.2019. While the evidence of petitioner was being recorded, an application under Order 6 Rule 17 CPC came to be filed at its instance seeking an amendment of plaint to the effect that Mohan Yadav who was initially shown as President of petitioner Union was in fact member of its Central Committee and thus, was an authorized representative to prosecute the above said suit on its behalf. The application was filed on 27.03.2019 which was opposed by respondent No.1 by filing his objections dated 10.09.2019.

Learned trial Court vide its impugned order dated 10.09.2019 dismissed the application filed at the instance of petitioner on the ground that the prayer for amendment was in fact to fill-in the lacuna which was not permissible.

Challenging the impugned order dated 10.09.2019 passed by learned Civil Judge (Junior Division), Malerkotla, learned counsel for the petitioner contends that the amendment sought to be incorporated is not going to change the nature of the suit or even the cause of action. He further submits that the amendment sought to be incorporated is infact intended to identify the important aspect about the maintainability of the suit filed at the instance of petitioner.

On the other hand, learned counsel for respondent No.1 submits that by way of amendment, petitioner is trying to fill-in the lacuna. He also submits that the objection regarding the fact that Mohan Yadav was neither the President; nor even authorized/ competent to file or pursue

the suit on behalf of the petitioner was raised in the written statement way-back in January 2018; whereas the present application has been filed even after recording of the statement of 03 of the petitioner's witnesses. He also submits that even in his affidavit of examination-in-chief filed by PW5-Mohan Yadav, he again reiterates himself in para 3 thereof, to be the President of the petitioner Union.

I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

Though, an objection was raised regarding the status and competency of Mohan Yadav in the written statement filed by respondent No.1 in January 2018, however, the amendment now sought to be introduced after some delay through the present application, depicting and describing the true and correct status of Mohan Yadav in the petitioner Union goes to the root of the matter and would certainly enable the Court to decide the suit involving the substantial rights of the parties completely and more effectively & in a mechanical manner. It may also be important to note here that amendment sought to be incorporated is neither going to change the cause of action; nor even the nature of the suit, as the same is infact intended to rectify the material particulars in the plaint.

An objection has been raised by respondent No.1 to the effect that Mohan Yadav, while appearing as PW5 again reiterates himself to be the President of petitioner Union in para 3 of his affidavit of examination-in-chief.

I have perused the said document. It appears to be an unintentionally bonafide mistake on the part of learned counsel representing the petitioner-Union before the trial Court; though as a deponent, Manoj Yadav has clearly depicted himself to be an authorized representative, however, inadvertently in para 3 of his affidavit he again reiterated himself as President of the Union which appears to be an error while reiterating the facts from the original plaint itself.

In view of the discussion made hereinabove, the revision petition is allowed subject to payment of costs of Rs.10000/- to be paid by the petitioner Union to respondent No.1.

It is clarified that the petitioner is permitted to carry out the necessary amendment regarding the status of Mohan Yadav to be authorized signatory/ competent person instead of its President in the title, prayer clause as well as in para 2 of the plaint. It is made clear that petitioner will not be allowed to carry out any other amendment in the plaint. However, respondent No.1 will be at liberty to raise all legal objections regarding the maintainability of the suit as well as competency of Mohan Yadav to file and pursue the suit on behalf of the petitioner and those shall be decided by the learned trial Court, as per law.

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

November 09, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>