

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2074-2015 (O&M)
Date of Decision: August 18, 2023

Jasbir Singh
...Petitioner

Versus

Gurmukh Singh
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Manpreet Singh Longia, Advocate
for the petitioner.

Mr.H.S.Jugait and Mr.Bharat Raheja, Advocate
for the respondent..

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 16.01.2015 (Annexure P-6), passed by learned Court below, whereby, an application filed by the present petitioner (plaintiff) under Order 6 rule 17 CPC for seeking amendment of the plaint, had been dismissed.

The essential facts, as culled from the paperbook are that respondent-defendant Gurmukh Singh had approached the petitioner-plaintiff Jasbir Singh and requested him to construct his house situated in village Khizrabad and after the settlement of the rates, the petitioner (plaintiff) started construction work of the house of the respondent

(defendant), by engaging other masons and labour. The construction was started on 04.05.2011 and the petitioner completed the construction work of the house of the respondent, till 20.08.2012. The total amount of construction work done was Rs.1,30,480/-, out of which, it is asserted by the petitioner that respondent had paid Rs.60,000/- during the construction work and the remaining amount of Rs.70,480/- is outstanding against the respondent. Relating to the same, it is version that the said amount has not been paid by the respondent, despite demand having been made by the petitioner.

In pursuance of the notice issued, written statement was filed at the behest of the respondent-defendant, wherein, besides raising preliminary objections on merits, it has been admitted about respondent-defendant having approached the petitioner-plaintiff for plastering of his house situated at village Khizrabad. However, rest of the assertions, with regard to the construction has been denied. The rate of plaster between the petitioner and respondent was settled at Rs.40/-sq. feet and remaining averments were denied. It is specific claim put forth in the written statement about plaster work having been conducted by the petitioner. Also, it is denied that an amount of Rs.70,480/- is still due towards him, as asserted in the plaint.

When the case was at the stage of recording of the evidence, an application under Order 6 Rule 17 CPC for seeking amendment was filed by the petitioner-plaintiff, while stating therein, that it was typographical error in mentioning about the respondent-defendant having approached the petitioner-plaintiff for the construction of his house, instead of plaster of his

house and new construction, like construction of gate, Arch etc. The rate of construction prevalent in the market, at that time was Rs.140/- per sq. feet to Rs.150/- per sq. feet. However, in reply, the aforesaid assertion for the change of the nature of the work done, as such, was resisted by the respondent-defendant.

After hearing both the counsel for the parties, vide impugned order, the application for seeking amendment of the plaint, as such, was dismissed, by learned Court below, on the ground that, throughout in the entire pleadings, the petitioner-husband had mentioned about the respondent-defendant having approached for the construction work only. It was repeated assertion so made and precisely, on this account, the application was dismissed.

Close perusal of the plaint, copy whereof is Annexure P-1, reveals about petitioner-plaintiff having categorically stated therein, about the respondent-defendant, having approached and requested him to construct his house. Even, the rates of construction, prevalent in the market, which was settled between the parties, are mentioned, which reads as herein given:-

“i)	That the construction upto lintel level including plaster	Rs.40/- per sq. ft
ii)	Construction of RCC slabs	Rs.50/- per sq. ft
iii)	Rate of flooring	Rs.10/- per sq. ft
iv)	Construction of gate pillar	Rs.7000/- lump sum
v)	Construction of Arch in drawing room	Rs.7000/- do
vi)	Earth excavation	Rs.2550/- lump sum
vii)	Fitting of sanitary pipes	Rs.15/- per foot

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| viii) | Stair work | Rs.3500/- lump sum |
| ix) | Side wall plastering & construction
settled at the time of construction etc.” | Rs.10,000/- |

Not only this, even further it has been stated in paragraph No.3 that after the settlement of the rate, the plaintiff started the construction work of the house of the defendant. Again, it was asserted in paragraph No.4 about the plaintiff having started the work of the house of defendant i.e. construction work on 04.05.2011 and during the construction work, the plaintiff used to take money for payment to the labour and further, it is stated that the plaintiff completed the construction work of the house of the defendant till 20.08.2012. Further, in paragraph No.8, it has been specifically stated about the defendant to pay the balance amount of the construction work done by the plaintiff.

Thus, from the contents of this plaint, it is evident that it was consciously so mentioned by the petitioner-plaintiff about settlement having reached between the parties to the lis, vis-a-vis, the construction of the house of the respondent-defendant. In this regard, the table of settlement of the rates of construction, as detailed aforesaid, also depicts about entire construction, to be raised. In the light of the same, now coming with the plea of having engaged the petitioner-plaintiff only for the purpose of plaster of the house and construction of gate, Arch etc., seemingly is an afterthought, more particularly, in view of the contents of the written statement, so filed by the respondent-defendant. If it was only for the plaster purpose and construction of gate and Arch etc., then, there was no need for

the settlement of the rates, as alleged to have been settled between the parties.

In these circumstances, the amendment, so sought, will change the very nature of the dispute and thus, prayer for amendment, on account of typographical error, appears to be malafide.

No doubt, as submitted by learned counsel for the petitioner-plaintiff that amendment of the plaint can be made at any stage, but in the latest decision, on this subject matter, rendered by the Hon’ble Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2023(1) RCR (Civil) 851*, law has been summed up in eleven points, relating to the amendment and it stated about amendment not to be allowed, where it changes the nature of the suit.

By the proposed amendment, the petitioner-plaintiff now intends to change the very basis of the controversy between the parties to the suit and the extent of the work so done, at the behest of the respondent-defendant. Precisely, on this account, learned Court below has rightly dismissed the application under Order 6 Rule 17 CPC.

As such, the impugned order calls for no interference and consequently, the present revision petition is hereby dismissed.

August 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No