

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

CR No. 1835 of 2018 (O&M)

Reserved on 15.5.2023

Date of pronouncement : 25.5.2023

M/s Jammu Cold Storage

...Petitioner

Versus

Punjab State Power Corporation Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. B.D. Sharma, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for respondents No. 1 and 2.

1. Being challenged in this revision petition is order dated 8.2.2018 (Annexure P-7) passed by Additional Civil Judge, (Senior Division), Jalandhar vide which an application for amendment of written statement filed by defendants respondents has been allowed leaving the plaintiff aggrieved and it has approached this Court by way of filing a revision petition.

2. Briefly stated the facts of the case are that in a pending civil suit titled 'M/s Jammu Cold Storage versus Punjab State Power Corporation Ltd. and others', plaintiff M/s Jammu Cold Storage, Village Bara Pind, Tehsil Kartarpur, Jalandhar had sought a declaration that supplementary bill requiring the plaintiff to deposit a sum of Rs.6,76,340/- with defendants is illegal, null and void.

3. On getting notice, the defendants had appeared and filed a written statement contesting the suit raising various legal objections contending that connection of the plaintiff Firm was checked by MMTS on 22.4.2012 in presence of Jaspal Singh, partner of plaintiff Firm. The report of inspection was prepared at the spot and a copy was delivered to Sh. Jaspal Singh. As per report of MMTS the contribution from red phase to yellow phase and blue phase was very low and on the LT side of meter of consumer R Y B reading was 110 105 100 amps., therefore, CT/PT were asked to be changed immediately. The account of consumer was overhauled from 12/2011 and 7/2012 and supplementary bill for Rs.4,17,598/- was raised. Other facts were also pleaded in the statement.

4. Issues on the merits were framed. The parties were given opportunities to lead evidence. When the case was at the stage of evidence of defendants then an application was filed on behalf of defendants under Order 6 Rule 17 CPC for incorporating para No. 4A in the written statement regarding check of meter CT/PT in M.E. Lab and finding the same as defective. Resultantly amount was charged on basis of M.E. Lab report, DDL and checking dated 22.4.2012. It was stated this fact could not be incorporated earlier as concerned Sub Division had not provided the record. The application was opposed vehemently on behalf of plaintiff, however, it was allowed by the trial Court of Additional Civil Judge, Senior Division, Jalandhar vide impugned order dated 8.2.2018 observing that the proposed amendment would not change the nature of the suit and fact is necessary to come on record for proper adjudication of the matter.

5. This order left the plaintiff aggrieved and it has approached this Court by way of filing the present revision petition, notice of which was given to respondent defendant No. 1 who have put in appearance through counsel.

6. I have learned counsel for the parties besides going through the record.

7. Learned counsel for the revision petitioner has attacked the impugned order mainly on two grounds. First being that the application is highly belated and it has been filed when the trial was at an advanced stage with defendants having led substantial evidence and secondly that it was an attempt to fill up lacuna in case of the defendants so as to nullify the gains of cross-examination which had accrued to the plaintiff from cross-examination of the witnesses of defendants. Whereas learned counsel for the respondents defendants has controverted those assertions.

8. After considering the rival contentions, I find that though scope of provision relating to amendment of pleadings has been restricted with introduction of the provisions that no application for amendment shall be allowed after the trial is commenced unless the Court comes to the conclusion that in spite of due diligence the parties could have raised the matter before the commencement of trial but if the entire provision is seen in totality then it transpires that under this provision the Court may at any stage of proceedings allow either party to alter or amend his pleadings in such manner and on such directions as may be just and on the second part provides that such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

9. Learned counsel for the respondent has referred to judgment of a coordinate Bench of this Court cited as '**Gurjit Kaur and another versus Balwinder Singh and others 2018(4) R.C.R. (Civil) 86**' which provides that amendment in pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. Though proviso to rule to some extent curtails absolute discretion of the Court to allow amendment at any stage. However, knowledge and diligence and considerations on which bonafides of the parties has to be decided in order to prevent frivolous applications for amendment. In this very judgment it was observed that the object of the rule is that Court may try merit of case and allow all amendments which may be necessary for determination of real controversy between the parties. In that judgment the conditions for allowing amendment of pleadings have been enumerated i.e. first condition of amendment is that it should not be unjust resulting in prejudice against opposite party. The second condition is that amendment is perceived to be necessary by the Court for the purposes of determining real issues between the parties then all amendments are to be allowed which satisfy two conditions. It was further observed that amendment at belated stage cannot be declined merely for that reason. Even otherwise under Section 151 Cr.P.C the Court has inherit power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In the impugned order itself the trial Court has observed that amendment would not change the nature of the suit and it is necessary for proper adjudication of the matter. There is no element of perversity or arbitrariness in the impugned order.

10. I do not see any reason to interfere with the order being challenged in the revision petition, however, it has been observed that in a suit filed in the year 2013 amendment of written statement has been allowed on 8.2.2018 i.e. after about five years i.e. after considerable delay the plaintiff ought to have been compensated in terms of imposing some cost on defendants but the trial Court omitted doing so. While upholding the impugned order it is directed that the defendants would pay cost of Rs.10,000/- to the plaintiff within a period of one month of receipt of copy of this order to compensate the plaintiff for the delay caused as a result of the acceptance of the application for amendment of the written statement.

11. With such modification, the revision petition is disposed of.

**(H.S. MADAAN)
JUDGE**

May 25, 2023
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No