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

C.R No.1979 of 2018 (O&M)

DATE OF DECISION: 08.05.2023

Lifestyle International Pvt. Ltd**...Petitioner**

Versus

Shopper's Stop Ltd and others**...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amit Jain, Advocate,
for the petitioner.

Mr. Chanderdeep Singh, Advocate,
for respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting-aside order dated 05.02.2018 (Annexure P-12) passed by learned Additional District Judge-cum-Judge, Special Commercial Court, Gurugram, vide which two applications dated 12.03.2015 and 16.12.2017 (Annexures P-7 and P-10 respectively) filed by respondent No.1 for amendment of plaint, have been allowed.

2. Succinct facts first.

2.1. Petitioner/defendant No.5 i.e., Lifestyle International Private Limited is a private limited company incorporated under the Companies Act, 1956. It is stated to be a part of prestigious landmark group based in Dubai. Each store of the petitioner brings five concepts together under one roof for convenient shopping for customers. Petitioner entered into a registered lease deed dated

14.07.2010 (Annexure P-1) with respondents No.2 to 5 (hereinafter referred to as “lessors”). The property was taken on lease by petitioner for running its retail store.

2.2. Respondent No.1 has filed a suit for declaration and mandatory injunction (initially before Delhi High Court, subsequently transferred to Gurugram vide order dated 29.04.2016) seeking decree of declaration to the effect that letter dated 24.03.2010 issued by respondent No.2 to respondent No.1 is null and void. Further respondent No.1 has also prayed for decree of mandatory injunction directing respondents No.2 to 5 to execute and sign the lease deed in terms of alleged Terms of Understanding dated 23.03.2005 (Annexure P-3).

2.3. Suit property was to be handed over to respondent No.1 for fit-outs on 01.10.2007 and final handover was scheduled for 01.03.2008. However, respondent No.1 did not take possession for as long as two years and as such, the said Terms of Understanding were terminated by respondent No.2 vide letter dated 24.03.2010 (Annexure P-4).

2.4. Upon completion of pleadings, learned trial Court framed issues on 18.03.2014 and matter was fixed for evidence of petitioner. Thereafter, respondent No.1 filed application (Annexure P-7) under Order 6 Rule 17 CPC for amendment of the plaint.

2.5. Reply (Annexure P-8) to application was filed taking preliminary objection that amendment cannot be allowed at this stage

as issues have already been framed and suit is now for fixed for adducing evidence.

2.6. During pendency of previous application for amendment of plaint, another application dated 19.12.2017 (Annexure P-10) for further amendment of plaint with a prayer for consequential relief for delivery of possession of the premises in question in terms of lease deed to be executed, was also filed.

2.7. Reply (Annexure P-11) to said application was also filed.

2.8. Learned trial Court, vide its impugned order dated 05.02.2018 (Annexure P-12) allowed both the applications. Hence, the instant revision petition.

3. I have heard learned counsels for the parties and have gone through the records.

4. While issuing notice, a Coordinate Bench of this Court presided over by Kuldip Singh, J., (as he then was in this Court), passed the following order :

“ The learned counsel for petitioner contends that suit was filed in the year 2010. Present petitioner was added defendant No.5 in the year 2011. The lease deed was executed in his favour on 14.07.2010. The issues were framed on 18.03.2014. Earlier, amendment application was filed on 12.03.2015. Now, second amendment application has been filed on 16.12.2017 and both application has been allowed. It is contended that the relief claimed is time barred qua defendant No.5-petitioner. Further consequential relief is not claimed and the lease deed in favour of defendant No.5-petitioner is not sought to be cancelled. Such amendment cannot be allowed when the trial has already commenced and it was within the knowledge of plaintiff.

Notice of motion for 09.08.2018.

In the meanwhile, proceedings before the trial Court are stayed.”

5. Succinctly, contentions raised before me are that :

(a) The applications for amendment of the plaint could not have been allowed after the framing of issues and commencement of trial and were also highly belated;

(b) In any case, the claim for rendition of accounts from 14.07.2010 till date of decree of the suit and deposit 50% of the said amount with the plaintiff as damages, sought to be introduced by amendment was time barred.

6. The impugned order is premised on the following discussion and reasoning:

“xxx

23. *But as per Sections 21 and 22 of the Specific Relief Act 1963, the relief of compensation can be added in the plaint i.e. plaintiff can be directed to amend the plaint of such terms as may be just for including a claim for such compensation. Similarly, according to Section 22 where the plaintiff has not claimed the relief under clause (a) or clause (b) of sub-section(1), the court can at any stage of the proceeding allow the plaintiff to amend his plaint on such terms as may be just for including a claim for possession.*

24. *As per Section 34 of the Specific Relief Act, any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interest to deny, his title to such character or right and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.*

25. *The plaintiff by means of amendment claims compensation and also consequential relief because if the suit for declaration and mandatory injunction is decreed, the consequential relief would be that the lease deed in favour of defendant no.5 by defendant no.1 and others is null and void and the defendants would be directed to execute and get the lease deed registered in favour of the plaintiff along with possession from defendant nos. 5.*

26. *Therefore, the application for amendment of the plaint can be allowed partly that the plaintiff can add compensation (damages) from the defendants and as the relief of possession is a consequential relief. Therefore, the plaintiff need not ask for the relief for possession.*

27. *Reliance for this purpose can be placed upon Jageshwari Devi and others vs. Shatrughan Ram, (2007)15 Supreme Court Cases 52, Surendera Kumar Sharma vs. Makhan (2009)10 Supreme Court Cases 626, G.Nagamma and another versus Siromanamma and Singh, another (1996) 2 Supreme Court Cases 25, Ragu Thilak D.John versus S. Rayappan and others, (2001)2 Supreme Court Cases 472.*

28. *The applications for amendment is allowed accordingly subject to payment of costs of Rs. 15000/- out of which Rs. 5000/- to go to DLSA. Rest be shared by all the defendants equally.*

Case to come upon 08.02.2018 for filing amended plaint.”

7. Except for the amendment for the introduction of claim for rendition of accounts and deposit of share of damages, I am inclined to agree with the reasons recorded and conclusion reached by the learned trial court.

8. While passing the impugned order, learned trial court noted the contention that the amendment sought was time barred but did not discuss or decide upon it. It seems to me that at least the part of the claim for the period from date of amendment of the plaint and the immediately preceding period of prescribed limitation for rendition of accounts sought to be introduced by amendment was not time barred. In my opinion refusal of the amendment qua rendition of accounts and deposit of share of damages would be like throwing the baby with bath water.

9. To my mind, the ends of justice will be met if the amendment allowed by the learned trial court is made prospective with

liberty to the petitioner to take legal objections in answer to the amended plaint. Ordered accordingly.

10. With these directions, instant writ petition stands disposed of.
11. Pending application (s), if any, shall also stand disposed of.

MAY 08, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No