

2023:PHHC:112823

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4964-2018 (O&M)

Date of Decision: August 28, 2023

Shehnaz Akhtar

...Petitioner

Versus

Mohd. Hasib and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sunny K. Singla, Advocate
for the petitioner.

Mr.Ishan Gupta, Advocate
for the respondents.

ARCHANA PURI, J.

Through the present petition under Article 227 of the Constitution of India, the petitioner(defendant No.2 before the Court below) has invoked the jurisdiction of this Court to challenge the order dated 02.05.2018 (Annexure P-7) passed by learned Court below, whereby, an application under Order 6 Rule 17 CPC filed by the respondent No.1-plaintiff, has been allowed.

The facts, as culled out from the paperbook are that, initially, the respondent No.1-plaintiff had filed a suit against defendants M/s King Steel Industries and Shehnaz Akhtar, thereby, seeking recovery for an

amount of Rs.4,30,380/-. When the case was at the stage of recording of defendant evidence, then respondent No.1-plaintiff, filed an application for seeking amendment of the plaint, whereby, he intended to make addition of word 'Steel' in the name of the firm of the respondent No.1-plaintiff, thereby, stating that name from M/s M.H. Industries, as recorded in the plaint, to M/s M.H. Steel Industries. It is the claim that the word 'Steel' has been left inadvertently.

After hearing learned counsel for the parties, vide impugned order, the aforesaid application for amendment was allowed, subject to costs of Rs.5,000/-.

Feeling aggrieved by the impugned order, the petitioner-defendant No.2 has filed the present revision petition.

It is claim of the petitioner that the aforesaid application has been filed at the fag end of the case and the proposed amendment was well within the knowledge of the respondents, right from the beginning and it is not the case that despite due diligence, the parties could not raise the matter before commencement of the trial.

At the very outset, learned counsel for the respondents-plaintiff had made submission that amendment was allowed, subject to costs of Rs.5,000/- and the said costs has since been accepted, as evident from the order dated 14.05.2018. Thus, it is submitted that now the amendment already allowed, as such, cannot be challenged. However, this submission is not tenable. Copy of the order dated 14.05.2018 has been placed on record, but however, the statement got recorded by learned counsel for the

defendant, vis-a-vis, acceptance of the costs, as such, has not been brought on record and in the absence of the same, it cannot be concluded that whether the costs was accepted with reservation or without reservation and thus, it cannot be concluded that there was disentitlement from challenge.

In the given circumstances, the submission, so made, ought to be considered on merits.

Before proceeding further, it is essential to make reference to the decision 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, wherein, the law relating to the amendment of pleadings was summed up in eleven points and specifically, few of the relevant points, for allowing the amendment, are as follows:-

- if the amendment is required for effective and proper adjudication of the controversy between the parties;
- where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed;
- Amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint;

It was also observed that where amendment sought is only with respect to the relief in the plaint and is predicated on facts, which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

In the light of the aforesaid dictum, the amendment can be allowed at any stage, but for the good grounds, spelt out for the same.

From the reading of the plaint, which has been placed on record

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as Annexure P-1, it is evident that name of the proprietorship firm of the respondent No.1 was mentioned as M/s M.H.Industries. However, in paragraph No.4 of the plaint, detail of the invoices, for the amount of Rs.2,53,628/- has been given. In the light of the same, suffice to consider the affidavit of respondent No.1-plaintiff, which was tendered during the course of the evidence and the same was proved as Ex.PW3/A and copy of same has come on record. Perusal of the same reveals that in paragraph No.3, the detail of the invoices, on the basis whereof, contest is there between the parties, has been given and the carbon copy of the invoices has been proved as Ex.P1 to Ex.P4. Copies of these documents have also been placed on record. Perusal of the same reveals that these relate to M/s M.H. Steel Industries. The documents, so proved in evidence, co-relate to the invoices, as mentioned in the plaint. Not only this, copies of relevant ledger account have been proved as Ex.P5 to Ex.P8. These also reveal about the name of the firm of respondent No.1-plaintiff to be M/s M.H. Steel Industries. Even the entries of the sale register, which have been proved as Ex.P9 and P10, also makes mention of the same name as 'M/s M.H. Steel Industries'.

Thus, documents, so relied upon, which have been tendered into evidence, co-relate to the contents of the plaint, which show about the alleged transactions between the parties to the lis, relating to which, recovery has been sought.

Taking into consideration the same and also considering the contents of the plaint, it becomes amply established that it is inadvertent

omission, at the behest of respondent No.1-plaintiff, in mentioning name of his firm. This proposed amendment is more of clarificatory nature, which shall enable the Court below to further pin-pointedly consider the dispute and would also aid in rendering a more satisfactory decision, without changing the nature of the suit. No malafide, as such, can be spelt out, on the part of respondent No.1-plaintiff, while moving an application for amendment, more particularly, the application has since been allowed by imposition of costs.

In view of the aforesaid discussion, the impugned order calls for no inteference and as such, the revision petition is hereby dismissed.

However, on query by the Court, it has been disclosed that three witnesses have since been examined by the defendants, which related the summoning of the record of M/s M.H. Industries. In the given circumstances, in the pursuance of the amendment so made, the petitioner-defendants shall be at liberty to seek re-examination of any witness, so examined and also to examine any further witness.

August 28, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No