

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(225)

CR-5798-2017

Date of Decision : February 23, 2023

Veena Khanna

.. Petitioner

Versus

Sanjay Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Paramveer Singh, Advocate, for
Mr. Sumeet Goel, Advocate, for the petitioner.

None for respondents No. 1 and 2.

Mr. Tejas Bansal, Advocate, for
Mr. S.K. Aggarwal, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

Present civil revision petition has been filed challenging the order dated 14.07.2017 (Annexure P-1) by which, the application filed by the petitioner-plaintiff seeking amendment of the plaint has been declined.

Learned counsel for the petitioner argues that while filing the civil suit, in the heading, the possession of the suit property was claimed but in the prayer clause “for possession of the suit property in case the plaintiff is not proved/found to be in possession of the suit property by the learned Court as a consequential relief also” the same could not be mentioned, hence, the amendment in the prayer clause has prayed in the application seeking amendment. The said prayer for amendment has been disallowed

by the trial Court by the impugned order dated 14.07.2017 on the ground that there was an application filed for amendment of the plaint on an earlier occasion which was allowed hence, the second amendment application cannot be allowed and that the averment that it was only due to the typographical error, the amendment sought to be incorporated was left out, cannot be believed.

Learned counsel for the respondents-defendants submits that repeated applications for amendment are being filed so as to delay the proceedings which are causing prejudice to them hence, the order passed by the trial Court rejecting the prayer for amendment because of repeated application seeking amendment, is perfectly valid and legal and the present civil revision petition may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The amendment to the plaint can be allowed in case the nature of suit does not changes and no prejudice is caused to the defendant while allowing the said amendment which is sought to be incorporated. Further, while considering the application for amendment of plaint, it is to be seen that the trial has not commenced or the same is not at a stage, which would amount to de-novo trial.

In the present case, it is a conceded position that the nature of suit will not change in case the amendment sought is to be incorporated, is allowed. In the heading, the plaintiff had already claimed possession but the same was not incorporated in the prayer clause. That being so, the Court should have been considerate to allow the said amendment so as to decide the lis between the parties on merits.

Even otherwise, the suit was not at a stage where some irreparable loss could have been caused to the defendants. No doubt, there will be a delay for which the petitioner can be burdened with costs so as to compensate the respondents-defendants for the delay caused due to the inadvertent mistake on the part of the petitioner-plaintiff to incorporate the amendment sought at the initial stage itself. The prejudice of delay caused to the defendants can be compensated by awarding cost.

Keeping in view the above, the present civil revision petition is allowed. The impugned order dated 14.07.2017 (Annexure P-1) is set aside. The application seeking amendment of the plaint is allowed and the applicant is allowed to incorporate the prayer of possession in the prayer clause as being sought by way of amendment. However, the same will be subject to the payment of Rs.25,000/- as cost. The cost be paid to the defendants so as to compensate their prejudice which has been caused to them due to the delay. The amendment will only be allowed after the cost is paid to be defendants.

February 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No