

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-7710-2017 (O&M)

Date of Decision: 10.8.2023

Vipin Kumar Bhargav

....Petitioner

VERSUS

Suman

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Promila Nain, Advocate,
for the petitioner.

Mr. S.S.Kamboj, Advocate,
for the respondent.

KARAMJIT SINGH, J.

CM-13076-CII-2023

Allowed as prayed for and documents Annexures R-5 to R-7
are taken on record subject to all just exceptions.

Main case

This order will dispose of present revision petition filed by the
petitioner/plaintiff against order dated 6.4.2017 (Annexure P-4) passed by
the Court of learned Civil Judge, Junior Division, Ludhiana whereby the
application filed by the petitioner under Order 6 Rule 17 CPC, has been
dismissed.

2. Brief facts of the case are that there was matrimonial dispute
between the parties at the time of filing of the suit and at present, the
respondent is residing in Australia. The petitioner filed suit for declaration
to the effect that the alleged gift deed bearing Wasika No.18716 dated
22.11.2004 is illegal, null and void and is result of fraud and mis-

representation and the same is not binding upon the rights of the petitioner in any manner and further, for grant of permanent injunction restraining the respondents from alienating the suit property as detailed in the headnote of the plaint.

3. The suit has been contested by the respondent.

4. During the pendency of the suit, the petitioner filed an application for amendment of the plaint in order to clarify that the gift deed in question is result of fraud, mis-representation and executed by the petitioner under undue influence and that even after execution of the said gift deed, the respondent abandoned the petitioner and that later on, the petitioner filed petition under Section 13 of Hindu Marriage Act and the same was allowed vide *ex parte* decree dated 13.2.2010 and that the respondent has shifted to Australia and got re-married with one Amandeep Singh.

5. Said application for amendment of the plaint was contested by the respondent and it was declined by the learned trial Court vide order dated 6.4.2017.

6. I have heard the counsel for the parties.

7. Counsel for the petitioner submits that the proposed amendment is necessary for just decision of the case; that subsequent events which the petitioner intends to bring to the notice of the learned trial Court by way of amendment are required to establish the act and conduct of the respondent who has already shifted to Australia and got re-married. So, prayer is made that the present petition as well as proposed amendment be allowed.

8. Present petition is resisted by the counsel for the respondent who submits that the facts with regard to alleged fraud, mis-representation and undue influence are already pleaded in the original plaint; that as far as subsequent events are concerned, the learned trial Court could take judicial notice of the same at the relevant time. So, prayer is made that the application for amendment of the plaint which was filed at belated stage was rightly dismissed by the learned trial Court.

9. I have considered the submissions made by the counsel for the parties.

10. Counsel for the respondent is unable to show that with the proposed amendment, the nature of the civil suit is going to be changed or that the proposed amendment is time barred or that the same if allowed would prejudice the rights of the respondent or is even otherwise barred under law. In the given circumstances, the proposed amendment cannot be disallowed just on the ground that it has been sought at a belated stage by the petitioner. On the other hand, this Court is of the view that the proposed amendment is required for effective and proper adjudication of the controversy between the parties and the same is not going to cause any prejudice to the respondent. Further by the very proposed amendment, the petitioner is not seeking to withdraw any admission already made by him which confers right on the other party.

11. Hon'ble Apex Court in **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another**; 2022 SCC Online SC 1128 has enumerated the circumstances wherein generally amendment is to be allowed and the situations under which prayer for amendment of the pleadings could be declined.

12. This Court is of the view that instant case is not covered under the exceptions carved out in **Sanjeev Builder's** case (supra) where a prayer for amendment of the pleadings could be disallowed.

13. In view of above, this Court is of the considered view that the proposed amendment requires to be allowed in the interest of justice. Consequently, the present petition is allowed and the impugned order is set aside and the application filed by the petitioner for amendment of the plaint is allowed subject to costs of ₹ 7,000/- which is to be paid by the petitioner to the opposite party on the next date fixed before the learned trial Court.

14. Counsel appearing on behalf of the respondent apprised the Court that the application for amendment was filed at belated stage and there is considerable delay in disposal of the suit and that the learned trial Court be given direction to dispose of the same in a time bound manner.

15. In view of above, the trial Court is directed to give two effective opportunities to the petitioner to conclude his evidence and then to provide effective opportunities to the other party and dispose of the suit in an expeditious manner, preferably within next one year.

(KARAMJIT SINGH)
JUDGE

August 10, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No