

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 1774/2023

Date of decision:21/03/2023

Geeta Devi

.....Petitioner

Vs.

Amanpreet Singh

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Divanshu Jain, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/defendant seeking setting aside of the impugned order dated 21.1.2023 (Annexure P-8) passed by Id. Civil Judge (Senior Division) Ludhiana whereby the petitioner's application under Order 6 Rule 17 of Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') for amendment of written statement has been dismissed.

It is submitted by the Id. Counsel for the petitioner that great fraud has been played upon the petitioner as her signatures were taken on blank stamp papers which were subsequently converted into alleged agreement(s) to sell on basis of which the respondent/ plaintiff has filed the suit for possession by way of specific performance of said agreement to sell. It is submitted that therefore, great injustice would be caused to the petitioner-defendant if she is not allowed to amend her written statement accordingly.

Ld. Counsel refers to judgment of Hon'ble Supreme Court in **'Life Insurance Corporation of India v Sanjeev Builders Private Limited and another, 2022 Live Law (SC)729'**, to submit that the Hon'ble Supreme Court has held that a liberal approach ought to be adopted in such matters. Ld. Counsel, in particular relies upon guidelines no. (v) to (ix) contained in para 70 of the said judgment.

It is further submitted that this Court in case of **M/s Mehendra Road Lines, Palwal v Food Corporation of India, 2001(3) RCR (Civil) 52**, had held that application for amendment cannot be dismissed merely on the ground of delay in seeking the amendment. It is stated that in the said case amendment was permitted 9 years after filing of written statement.

It is then submitted that only one witness has been examined by the petitioner and therefore, no prejudice would be caused to the respondent/plaintiff if application of the petitioner for amendment is allowed. It is submitted that amendment may be allowed in such-like cases on payment of exemplary costs.

No other argument has been raised on behalf of the petitioner.

Heard ld. Counsel.

Perusal of the record of the case shows that admittedly, in the present case when the petitioner filed application for amendment of her written statement, the trial had already commenced. The present Civil Suit was filed on 22.3.2016. Petitioner filed the Written statement thereto almost one year later on 20.3.2017, i.e. about 6 years ago. Thereafter, issues were framed on 7.7.2017. The respondent/plaintiff closed evidence on 2.8.2017,

and petitioner submitted her affidavit in evidence on 31.10.2022. At time of arguments, it has been admitted by Id. Counsel that even one defendant's witness has been examined thereafter. It is further recorded in the impugned order that the petitioner after availing 7 opportunities for leading evidence, filed present application for amendment.

Further, it is not disputed by the Id. Counsel that facts in respect of a second agreement, which are sought to be brought on record by way of present amendment, were already in the knowledge of the petitioner at the time of filing her written statement. However, perusal of the application under Order 6 Rule 17 CPC (Annexure P-6) shows that no cogent reasons have been given therein as to why the said facts were not mentioned in the written statement filed by the petitioner, despite being in her knowledge. It is also admitted by the Id. Counsel that though pleadings in respect of second agreement have been taken in the written statement, however, by way of present amendment, defendant/petitioner only seeks to elaborate thereupon. It is also not denied that facts regarding second agreement, which are now sought to be brought on record by way of present amendment, are subject matter of another suit where the petitioner is a party. In my view, seeking amendment of pleadings in the abovesaid admitted facts and circumstances goes contrary to the very provision of Order 6 Rule 17 CPC, which is reproduced hereinbelow, stipulates that:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.” (Emphasis supplied).

Thus, from the above it is clear that as per proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. In the present case, admittedly, that is not so. It is the admitted case of the petitioner that she had prior knowledge of the facts that she now wants to incorporate in the written statement by way of amendment. As per law/ above-stated provision, that cannot be permitted. Moreover, petitioner is seeking to make the amendment after 6 years of filing the written statement, without disclosing cogent reasons for doing so.

Hon’ble Supreme Court in case of **“Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others” Civil Appeal No.6921 of 2009**, has laid down the following guidelines:

“E. Civil Procedure Code, Order 6, Rule 17 - Amendment of pleadings sought by a party - Following principles ought to be taken into consideration while allowing or rejecting the application for amendment :-

(1) Whether the amendment sought imperative for proper and effective adjudication of the case ?

(2) Whether the application for amendment is bona fide or mala fide ?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

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(5) *Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case ? and*

(6) *As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

(7) *These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17 - These are only illustrative and not exhaustive.*

(8) *The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.*

(9) *While deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."*

Even in the relied upon case of **LIC (supra)**, the Hon'ble Supreme Court has laid down the following guidelines for permitting amendment of pleadings:

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

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- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
- (ii) to avoid multiplicity of proceedings, provided*
 - (a) the amendment does not result in injustice to the other side,*
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) 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.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

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(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the 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.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See **Vijay Gupta v. Gagninder Kr. Gandhi & Ors.**, 2022 SCC OnLine Del 1897)".*

In my view, it is adequately demonstrated hereinabove, that the petitioner's case does not fall within the abovesaid parameters laid down by the Hon'ble Supreme Court. Accordingly, no grounds for exercise of revisional jurisdiction of this Court are made out.

Dismissed.

21/03/2023
Joshi

(Nidhi Gupta)
Judge