

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

CR-3332-2019 (O&M)

Date of decision: 03.05.2023

Darshan Singh

...Petitioner

VS.

Amarjit Singh Chawla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Singla, Advocate,
For the petitioner.

Mr. Ayush Goyal, Advocate for
Mr. Vishal Aggarwal, Advocate,
For respondent No.1.

Ms. Anju Sharma Kaushik, DAG, Punjab for respondent No.3.

None for respondent No.2, despite service.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 06.12.2018 (Annexure P-8) passed by learned Civil Judge (Junior Division),Jalandhar, whereby application filed by petitioner/plaintiff under Order 6 Rule 17 read with Section 151 CPC for amendment in plaint,was dismissed.

2. Learned counsel for petitioner submits that petitioner filed a suit for declaration that defendant/respondent No.1 is entitled for construction to the extent authorized/sanctioned by Jalandhar Municipal Corporation (respondent No.2 herein) in his house and to direct defendant No.1 to demolish the excess construction made by him and to restrain him

from violating the privacy of petitioner. Amendment of plaint was sought for declaring letter dated 22.09.2016 compounding the unauthorized construction raised by defendant No.1 is illegal and directly linked with the relief sought by petitioner in civil suit.

2.1. He would further submit that on the request of petitioner, Senior Town Planner of respondent No.2 got conducted measurements of the actual constructed portion of respondent No.1 at his house and gave report dated 06.07.2012 (Annexure P-2) and recommended removal of unauthorized construction which cannot be compounded. In the written statement, it was disclosed that unauthorized construction made by defendant No.1 has been compromised with the compoundable area. After coming to know about factum of compounding of unauthorized construction, petitioner made an application under RTI Act to supply the certified copy of sanctioned construction plan of respondent no.1 but the same were not supplied to him. Petitioner filed an application for amendment in the Head note of the plaint for declaration that letter dated 22.09.2016 compounding the unauthorized construction raised by defendant No.1 was illegal. Vide impugned order, learned trial Court dismissed the said application.

2.2. Learned counsel for petitioner would further contend that the proposed amendment is only in the context of disclosure made by defendant No.1 in the written statement. Petitioner/plaintiff seeks to challenge the proceedings disclosed by defendant(s). He submits that amendment sought by petitioner and relief already sought by the petitioner in civil suit are interconnected, therefore, it would not amount to seeking new relief by plaintiff/petitioner. He further canvasses that as per the provisions of CPC,

an amendment can be sought at any stage by either of the parties for determining the real and substantial question in controversy.

3. On the other hand, learned counsel appearing on behalf of respondent No.1 strenuously opposes the petition and argues that the proposed amendment would amount to introduction of different and new relief altogether, which cannot be legally sought and the same is also barred by limitation.

4. I have heard competing arguments of learned counsel for parties and gone through the case file.

5. Power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in *Ganga Bai v. Vijay Kumar & Ors.*, (1974) 2 SCC 393, the Supreme Court held thus:

“22.The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court.....”

6. In the instant case, since the amendment proposed to be carried out by petitioner is *qua* subsequent developments and certain facts which were not to his knowledge when suit was filed. It was only when written statement was filed by respondent No.1, that he came to know that disputed construction has been made compounded allegedly in conspiracy and collusion of defendants by ousting plaintiff. It is the case of petitioner/plaintiff before learned Trial court that in any case such a compounding was not permissible in law, therefore, he is entitled to challenge the same. That apart, he had sought certain information under RTI

Act, and upon its becoming available to him, he wants to lead evidence *qua* the same. In the absence of pleadings, needless to say, the evidence adduced beyond pleadings would be impermissible and cannot be relied upon.

7. In the premise, having seen the proposed amendment, I am of the view that the same would not change the nature of suit and is necessary for just and complete adjudication of the dispute. In the premise, the impugned order is set aside. The application seeking proposed amendment is allowed and petitioner may file the amended plaint before learned trial Court, who shall proceed further, in accordance with law, for trial of the suit.

8. Disposed of accordingly.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

03.05.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No