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

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Reserved on: 14.11.2023

Pronounced on: 13.12.2023

M/s Goel Roadways and another

.....Petitioners

Versus

United India Insurance Company Limited and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Shivam Grover, Advocate,
for the petitioners.

Mr. Harsh Aggarwal, Advocate,
for respondent No.1 – Insurance Company.

NAMIT KUMAR, J.

1. This revision petition has been filed by petitioner-defendants under Article 227 of the Constitution of India for setting aside order dated 02.07.2022 passed by learned Civil Judge (Senior Division), Ludhiana in Civil Suit No.CS 43716 of 2013 titled 'United India Insurance Company Limited and another v. M/s Goel Roadways and another', whereby application filed by respondent-plaintiffs under Order 6 Rule 17 read with Section 151 CPC for amendment of plaint, has been allowed.

2. Brief facts of the case are that respondent-plaintiffs filed a suit for recovery of Rs.24,67,615/- by way of compensation and

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damages for the damaged delivered consignment dispatched vide G.C. Note No.736609 dated 10.06.2009 Ex. Coimbatore to Malerkotla pleading therein that plaintiff No.1 is a special power of attorney of plaintiff No.2. Plaintiff No.2 – M/s Nahar Fibres Proprietors Nahar Spinning Mills Limited had got a consignment of machinery from M/s Lakshmi Machine Works Ltd., Perianalcken Playam, Coimbatore vide invoice No.111900163/2 dated 10.06.2009 worth Rs.34,82,719.42. The said consignment was dispatched through defendants vide G.C. Note No.736609 dated 10.06.2009 Ex. Coimbatore to Malerkotla through truck Nos.HR-45-A-1403 and HR-56-4932 for safe carriage and delivery at the destination station. The said consignment was duly insured with plaintiff No.1 vide policy No.200900/21/08/02/00000689. The said consignment was delivered damaged at the destination station since truck No.HR-56-4932 met with an accident in transit. The factum regarding damaged delivery of the consignment was confirmed by the defendants vide their damage certificate bearing reference No.0779 dated 26.11.2009 addressed to Nahar Fibres, 373, Industrial Area A, Ludhiana. It is further pleaded that in spite of lodging the claim by plaintiff No.2 with the defendants vide letter dated 07.07.2009 at Ludhiana, they had not taken any step to settle the claim. Upon notice, defendants filed written statement. During the pendency of the suit, respondent-plaintiffs filed an application under Order 6 Rule 17 read with Section 151 CPC, which has been allowed by the trial Court vide impugned order dated 02.07.2022.

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3. Learned counsel for the petitioners contended that the trial Court has committed grave error in allowing the application of the plaintiffs under Order 6 Rule 17 read with Section 151 CPC seeking amendment in the plaint, which is in flagrant violation of the provisions of Order 6 Rule 17 CPC. He further contended that in the present case the trial had already commenced and after commencement of trial the trial Court could not have allowed the amendment application filed by respondent-plaintiffs as it was not maintainable. He further contended that respondents have nowhere stated in the application seeking amendment in the plaint that amendments sought to be made in various paras of the plaint were not in their knowledge initially at the time of preparing the plaint and that after due diligence those facts came to his knowledge lateron. He further contended that respondent-plaintiffs by way of amendment are seeking to improve their case and same cannot be permitted under the law and the impugned order is liable to be set aside. In support of his contentions, learned counsel for the petitioner placed reliance on the judgments of the Hon'ble Supreme Court in ***Vidyabai and others v. Padmalatha and another, 2009(1) R.C.R.(Civil) 763; North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) By Lrs, Law Finder Doc Id # 143877; Civil Appeal No.1638 of 1987 - Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar – decided on 13.12.1989; Civil Appeal No.5667 of 2006 – Ajendraprasadji N. Pande and another v. Swami Keshavprakeshdasji N. and others – decided on 08.12.2006; Civil Appeal No.2019 of 2007 - Usha Balashaheb Swami and others v.***

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Kiran Appaso Swami and others – decided on 18.04.2007 and J. Samuel and others v. Gattu Mahesh and others, 2012(1) R.C.R.(Civil) 903.

4. Per contra, learned counsel for respondent No.1 contended that the trial Court has rightly allowed his application under Order 6 Rule 17 read with Section 151 CPC seeking amendment of plaint as it was necessary for proper adjudication of the matter and effectively deciding the controversy between the parties. He further contended that no prejudice has been caused to the petitioners by way of present amendment as the same is clarificatory in nature. He further contended that it is mandatory upon the Courts to allow all amendments which are necessary for the purpose of determining the real question of controversy between the parties. He further contended that power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. In support of his contentions learned counsel for respondent No.1 placed reliance on the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another, 2023(1) R.C.R.(Civil) 851.***

5. I have heard learned counsel for the parties and perused the record.

6. Amendment in pleadings is envisaged/ permitted under Order 6 Rule 17 of the Civil Procedure Code (for short 'CPC'), which is reproduced hereinbelow, and 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.”

7. Hon’ble Supreme Court in ***Baldev Singh & Ors. Vs Manohar Singh & Anr 2006(2) RCR 265*** enunciated law for amendment of pleadings, which is summed up as:-

- 1. Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.*
- 2. Wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper.*
- 3. Court shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.*
- 4. Plea of limitation can be allowed to be raised by way of amendment in written statement.*
- 5. Powers of the Court are wide enough to permit amendment of the written statement by incorporating an alternative plea of ownership in the application for amendment of the written statement.*

6. *Even there were some admissions in the evidence as well as in the written statement it was still open to the parties to explain the same by way of filing an application for amendment of the written statement.*
7. *Be a ground for rejection of the same when no serious prejudice is shown to have been caused to the plaintiff.*
8. *An amendment of a plaint.*
9. *Courts are inclined to be more liberal in allowing amendment of written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.*
10. *Inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint.*

8. In ***Abdul Rhman & Anr. Vs Mohd.Ruldu & Ors. 2012 (4) CCC 584 (S.C.)*** it has been held by the Hon'ble Supreme Court that a change in the nature of relief claimed shall not be considered as a change in the nature of Suit. Power of amendment should be exercised in the larger interests of doing full and complete justice between the parties. It has been further held that amendment of pleadings can be allowed at any stage of the proceedings in the interest of justice. Main purpose of allowing the amendment is to minimize the litigation and the plea that relief sought by way of amendment is barred by time is to be considered in the light of the facts and circumstance of each case and no harm would be caused if the application is allowed.

9. In para 70 of the judgment in ***Life Insurance Corporation's case (supra)***, the Hon'ble Supreme Court has held as under: -

“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 negatived.

(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

(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 pinpointedly 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.*
- (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**)”*

10. In the case of **J. Samuel** (supra), the Hon’ble Supreme Court has held as follows:

“12. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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.

13. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

15. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

16. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who

*prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order 6 Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order 6 Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of others case. It also helps checking the delays in filing the applications. [vide **Aniglase Yohannan v. Ramlatha and Others, 2005(4) RCR (Civil) 563 : (2005) 7 SCC 534, Ajendraprasadji N. Pandey and Another v. Swami Keshav prakeshdasji N. and Others, Chander Kanta Bansal v. Rajinder Singh Anand, 2008(2) RCR (Civil) 801 : 2008(3) Recent Apex Judgments (R.A.J.) 83 : (2008) 5 SCC 117, Rajkumar Guraward (dead) through LRS. v. S.K. Sarwagi and Company Private Limited and Another, 2008(4) RCR (Civil) 824 : 2008(6) R.A.J. 248 : (2008) 14 SCC 364, Vidyabai and Others v. Padmalatha and Another, 2009(1) RCR (Civil) 763 : 2009(1) RCR (Rent) 120 :***

(2009) 2 SCC 409, Man Kaur (dead) By LRS v. Hartar Singh Sangha, 2011(1) RCR (Civil) 189 : 2010(6) R.A.J. 437 : (2010) 10 SCC 512.”

11. In the present case, perusal of the record shows that agreement of subrogation-cum-special power of attorney has been proved on record as Ex.P4/1 in the testimony of PW1 and letter of subrogation is on record as Ex.P5 and Ex.P5/1. Invoice bearing No.111900163 is also already on record as Ex.P6/1 and has been depicted in the letter of subrogation. The trial Court has rightly observed that both the documents sought to be incorporated in the pleadings by way of amendment have been duly proved on record by the plaintiffs during the testimony of PW1. This Court is of the opinion that these documents are very much necessary for the proper adjudication of the controversy and in case application is dismissed, the plaintiffs would suffer an irreparable loss and with the amendment no prejudice has been caused to the petitioners. Moreover, the amendment would not change the nature of the claim.

12. In view of the facts and circumstances of the case, no benefit of the judgments cited by learned counsel for the petitioner can be given to them.

13. The impugned order passed by the trial Court is quite detailed and well-reasoned and does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere

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with the impugned order by way of exercising the revisional jurisdiction.

14. Finding no merit in the revision petition, the same stands dismissed.

13.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No