

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4340-2023 (O&M)

Date of Decision: 31.8.2023

Kamal Singh

....Petitioner

VERSUS

Joint Commissioner and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Jai Bhagwan Sharma, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Challenge in the instant revision petition is to order dated 5.5.2023 (Annexure P-1) passed by the Court of Civil Judge, Junior Division, Faridabad whereby an application filed by the petitioner/plaintiff seeking amendment of the plaint under Order 6 Rule 17 CPC has been dismissed.

2. Counsel for the petitioner has *inter alia* contended that initially, the petitioner filed suit for declaration to the effect that notice dated 24.10.2016 issued by respondent No.2-Municipal Corporation under Section 261 of Haryana Municipal Corporation Act, 1994 is null and void and is not binding on the petitioner and further declaration to the effect that order dated 21.4.2017 passed by respondent No.1-Joint Commissioner, is also illegal, null and void and a decree for permanent injunction restraining the defendants from encroaching/demolishing the suit property and a decree for mandatory injunction directing the defendants to withdraw impugned notice dated 24.10.2016. It has been further submitted that the suit is being

contested by the defendants/respondents and that the learned trial Court directed the parties to maintain status quo with regard to property in question.

3. Counsel for the petitioner has further contended that however, during the pendency of the suit, the defendants illegally demolished the suit property in violation of the aforesaid order of status quo passed by the learned trial Court; that on account of said subsequent events, the petitioner intends to amend the plaint in order to seek directions to the defendants/respondents to restore the suit property to its original position as was on the date of filing the suit and accordingly, an application for amendment of the plaint was filed under Order 6 Rule 17 CPC; that, however, the said application has been dismissed by the learned trial Court vide impugned order (Annexure P-1) on the ground that the proposed amendment has been sought at the belated stage and further, the petitioner has not exercised due diligence in filing the application seeking amendment of the plaint. The trial Court while dismissing the application for amendment of the plaint, further observed that it is not mentioned by the plaintiff that he wants to make changes in the plaint which can justify addition of the prayer clause and merely addition in the prayer clause of the plaint without amendment in the plaint does not make any sense as in the original plaint, there is no mention regarding demolition of the house by the defendants. Counsel for the petitioner further submits that the proposed amendment is not barred under the provisions of law and that no prejudice is going to be caused to the opposite party if the proposed amendment is allowed. He further submits that the suit is at its initial stage as till date, no witness has been examined on behalf of the petitioner. So, prayer is made

that the present petition be allowed and the petitioner be permitted to amend the plaint to the extent as stated above.

4. I have considered the submissions made by the counsel for the petitioner.

5. Initially, the petitioner filed suit for declaration to challenge the validity of the notice dated 24.10.2016 issued by defendant No.2 and order dated 21.4.2017 passed by defendant No.1 and to further restrain the defendants from demolishing the suit property and decree for mandatory injunction to direct the defendants to withdraw impugned notice dated 24.10.2016. It is the plea of the petitioner that during the pendency of the suit, the defendants/respondents demolished the suit property despite the fact that the learned trial Court directed the parties to maintain status quo with regard to the same. Thus, amendment of the plaint was sought by the petitioner on account of subsequent events which had taken place during the pendency of the suit and as such, the learned trial Court fell into error by dismissing the application under Order 6 Rule 17 CPC on the ground that it has been filed at the belated stage without exercise of due diligence by the petitioner. Even the observations made by the learned trial Court that in the original plaint, there is no mention regarding demolition of the house, is also not sustainable, as, as per the petitioner, the alleged demolition took place after filing the suit. It is trite law that merits of proposed amendment in the plaint are not required to be gone into at the stage of consideration of the application under Order 6 Rule 17 CPC. Question as to whether at the time of filing of the suit, the building in question was in existence or that it was demolished during the pendency of the suit, shall be adjudicated upon by the learned trial Court in light of evidence that shall be led by the parties.

If the Court arrives at a conclusion that the building in question was demolished during the pendency of the suit, absence of an appropriate prayer may result in further multiplicity of litigation. Furthermore, as the case is at its initial stage, it cannot be said that if the application for amendment of the plaint is allowed, it will amount of de-novo trial.

6. In light of the above discussion, the impugned order being illegal, is hereby set aside and the civil revision petition is allowed and the application filed by the petitioner under Order 6 Rule 17 CPC stands allowed subject to costs of ₹ 3000/- which is to be paid by the petitioner to the opposite party on the next date fixed in the trial Court.

7. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

August 31 , 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No