

Vinod Kumar

....Petitioner

versus

Subhash Chander and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Neeraj Yadav, Advocate for the petitioner.

Mr. Puneet Sharma, Advocate for respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 13.07.2022 (Annexure P-5) passed by learned Civil Judge (Junior Division), Jalandhar in CS-107-2018 titled "Vinod Kumar and another versus Subhash Chander", whereby application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioner-plaintiff No.1 seeking to amend the plaint, was dismissed.

2. Learned counsel for petitioner contends that petitioner and respondent No.2 filed a suit for declaration that they are owners in possession of property in question and further sought mandatory injunction directing respondent No.1 to close the door opening towards the shop/ plot in question. He further contends that respondent No.1 blocked the entrance of the plot/ shop in question by raising four walls and opened a gate from his own shop. Thereafter, petitioner filed an application seeking to amend the plaint to the effect of seeking relief of possession and for addition of certain facts relating to taking over possession by respondent No.1. Vide impugned order dated 13.07.2022 (Annexure P-5), learned Court below illegally and arbitrarily dismissed the aforesaid application.

3. I have heard learned counsel for parties and perused the case file.

4. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner unless afforded an opportunity to amend the plaint.

5. Having seen the case file, it does so appear that there is certain ambiguity with regard to possession of petitioner (plaintiff No.1) *qua* suit property. Though in the plaint, there is a positive affirmation that he is the owner in possession of property, but at the same time, in cross-examination, he seems to have conceded that he is not in possession. Though case made out by learned counsel for the petitioner in course of arguments before this Court is that plaintiff was indeed in possession of suit property at the time of filing of the plaint, but during pendency of trial, respondent No.1-defendant has forcibly ousted him and therefore, in order to avoid any multiplicity of litigation, it is necessary to amend plaint to bring out factual position and seek consequential relief of possession *qua* suit property depending on the outcome of declaration *qua* title.

5.1 Be that as it may, given the nature of amendment, I am of the view that no prejudice would be caused to the other side in case, amendment *qua* seeking relief of decree of possession is sought. The grant of said relief, in any case, is a sequel consequence to establishing title in the suit property by plaintiff. In case, plaintiff fails to establish his title in the suit property needless to say that he would not be held entitled to possession. If at this stage, amendment is not allowed, assuming petitioner succeeds in the trial *qua* title in his favour, as a necessary consequence, he would have to file subsequent suit for possession which would mean multiplicity of litigation.

6. In course of arguments, on a Court query, learned counsel for respondent No.1/defendant fairly concedes that he has no objection if petitioner/ plaintiff withdraws his present suit and files the same afresh in order to avoid any

delay in proceedings by way of filing amended written statement as well as framing of issues and subsequent evidence thereupon.

6.1 While this Court appreciates the concession being made by learned counsel for respondent No.1/defendant, however, delay in proceedings is at the peril of plaintiff himself who has instituted the suit and defendant would not, in any manner, suffer adverse consequences of delay.

7. In entirety of the situation, in order to avoid any multiplicity of litigation, revision petition is allowed. Impugned order dated 13.07.2022 (Annexure P-5) is set aside. One opportunity is granted to petitioner to amend his plaint.

8. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

February 23, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No