

CR-3868 of 2022 (O&M)

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

CR-3868 of 2022 (O&M)
Reserved on: 11.08.2023
Pronounced on: 01.09.2023

Hari Singh

.....Petitioner

Versus

Balvir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. A.K. Goel, Advocate,
for the petitioner.

Mr. N.K. Manchanda, Advocate,
for respondent No.1.

NAMIT KUMAR, J.

CM-13981-CII of 2023

1. This application has been filed by the applicant-petitioner for exemption from filing certified copies of zimni orders dated 21.05.2022 to 17.05.2023 passed by learned Additional Civil Judge (Senior Division), Nihal Singh Wala as Annexure P-5 and for permission to place on record true copies of the same.

2. Allowed as prayed for. Annexure P-5 is taken on record subject to all just exceptions.

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1. This revision petition has been filed by petitioner/defendant No.2 under Article 227 of the Constitution of India

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for setting aside order dated 21.05.2022 passed by learned Additional Civil Judge (Senior Division), Nihal Singh Wala, whereby application filed by respondent No.1/plaintiff under Order 6 Rule 17 read with Section 151 CPC, has been allowed.

2. Brief facts of the case are that respondent No.1/plaintiff filed a suit under Section 6 of the Specific Relief Act, 1963 for possession of land measuring 5-1/4 marlas jadid situated within the red line area of village Bilaspur, Tehsil Nihal Singh Wala, District Moga, along with consequential relief of permanent injunction restraining the defendants and their agents from demolishing, constructing or changing the nature of the suit property in any manner and further restraining the defendants from alienating the suit property by way of selling, mortgaging, gift, exchanging, transferring forcibly, illegally and without due course of law. Upon notice, petitioner/defendant No.2 appeared and filed written statement stating therein that he was owner in possession of the house in question and was residing with his family members in the said house for so many years and defendants No.1 and 3 had no concern with the house in question. The trial Court framed issues on 30.04.2019 and the case was adjourned to 23.05.2019 for evidence of the plaintiff. On 05.08.2019, PW-1 Jarnail Singh and PW-2 Balvir Singh were present and examined. On 19.11.2019, PW-1 Jarnail Singh was cross-examined and PW-2 Balvir Singh was partly cross-examined. On 05.03.2020, PW-3 Jaswinder Singh and PW-4 Jasvir Kaur were present and examined. PW-5 Balour Singh was partly cross-examined and case was adjourned to 19.03.2020. Thereafter, due

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to Covid-19 pandemic outbreak, the proceedings of the case were adjourned. On 24.08.2021, case was adjourned to 12.10.2021 for cross-examination of PW-2 and PW-5 and the case was adjourned on various date for the said purpose. Respondent No.1/plaintiff filed an application dated 10.01.2022 under Order 6 Rule 17 read with Section 151 CPC seeking permission to amend the plaint, which has been allowed by learned Additional Civil Judge (Senior Division), Nihal Singh Wala, vide impugned order dated 21.05.2022.

3. Learned counsel for the petitioner contended that the trial Court has committed grave error in allowing the application of the plaintiff 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 No.1/plaintiff as it was not maintainable. He further contended that respondent No.1/plaintiff has 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 his 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 No.1/plaintiff by way of amendment is seeking to improve his 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

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Hon'ble Supreme Court in *Vidyabai and others v. Padmalatha and another*, 2009(1) R.C.R.(Civil) 763; *J. Samuel and others v. Gattu Mahesh and others*, 2012(1) R.C.R.(Civil) 903; *Pandit Malhari Mahale v. Monika Pandit Mahale and others*, (2020) 11 Supreme Court Cases 549 and this Court in *CR-6484 of 2017 – Jagjit Singh v. Jasmer Singh and others* – decided on 05.05.2023. He also submitted that CR-5033 of 2022 is pending in this Court between the same parties, wherein challenge is laid to the order dated 17.08.2022 passed by the trial Court whereby his application filed under Order 7 Rule 11 CPC for rejection of plaint has been dismissed. This Court has stayed the passing of final order by the trial Court and the same is now fixed for 31.08.2023 before a Co-ordinate Bench of this Court.

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 petitioner by way of present amendment. 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 judgments of the Hon'ble Supreme Court in *Abdul*

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Rehman and another v. Mohd. Ruldu and others, 2012(4) R.C.R.(Civil) 481; Harshwardhan and others v. M/s Jai Jalaram Infrastructure Firm and others, 2018(5) R.C.R.(Civil) 831; Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another, 2022(12) Scale 850 and this Court in Jai Singh Dahiya v. State of Haryana and others, 2016(3) R.C.R.(Civil) 914 and Bakshish Singh v. Amar Singh and another, 2019(3) PLR 141.

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. From a reading of the above provision, 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. However, in

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the present case, neither in the application seeking amendment, nor in the impugned order, is there any statement by the applicant/ finding by the trial Court to the effect that in spite of 'due diligence' the pleas sought to be incorporated could not be raised by respondent No.1 before the commencement of trial.

8. A perusal of the impugned order reveals that while allowing the amendment application of respondent No.1/plaintiff, the trial court has merely observed as follows:

“7. After considering everything on record, this court is of the considered view that all the amendments which are helpful in effectively deciding the matter in controversy must be allowed liberally to avoid delay and multiplicity of litigation. By way of present amendment application, the applicant/plaintiff has sought permission of the court to amend his plaint, which is detailed in Para No.3 of the application. Moreover, cross-examination of PW-2 Balvir Singh plaintiff and PW-5 Balour Singh, marginal witness is yet to be concluded and respondents/defendants shall get an opportunity to cross-examine plaintiff and his witness PW-5 Balour Singh, qua the said facts mentioned in the amended plaint.

*8. Moreover, in Judgment of Hon'ble Supreme Court of India in case titled as **Baldev Singh & Ors. Vs Manohar Singh & Anr 2006(2) RCR 265** law enunciated for amendment of pleadings by Supreme Court 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.*

*9. In case titled as **Abdul Rhman & Anr. Vs Mohd.Ruldu & Ors. 2012 (4) CCC 584 (S.C.)** it has been held 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. This court is of the view that no harm would be caused if the application is allowed.”*

9. In my view, as per the proviso above, it is incumbent upon the trial Court to return a categorical finding that “in spite of due diligence, the party could not have raised the matter before the commencement of trial.” In the present case, it is clear from a reading of the above excerpt of the impugned order, that no such finding has been given by the trial Court. In my view, the trial Court was in patent error in not complying with the clear mandate of the provision.

10. Hon’ble Supreme Court in **Pandit Malhari Mahale** (supra)has held as under:

*“7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In **Vidyabai & Ors. v. Padmalatha &Anr. [(2009) 2 SCC 409]**, this Court observed in para 19 as under:*

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide

the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

8. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed."

11. The impugned order is thus, clearly vitiated, and cannot be sustained for this reason.

12. The Hon'ble Supreme Court in **Vidyabai** (supra), has held that:

"7. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

"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."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

8. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said pre-condition.

The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Civil Procedure Code envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'."

13. A perusal of the above judgment shows that the third condition precedent for permitting amendment is that trial should not have begun. Admittedly, this condition too is not complied with in the present case as, in the present case, the issues were framed on 30.04.2019. Therefore, as per the above pronouncement, 30.04.2019 would be 'the first date of hearing'. Thereafter case was adjourned to 23.05.2019 for evidence of the plaintiff. From the perusal of the record it is evident that five witnesses had already been examined since 05.08.2019. However, out of them PW-2 and PW-5 were still to be cross-examined and the matter was adjourned to 12.10.2021 for their cross-examination.

14. From the above facts it is clear that the trial had well and truly commenced/was underway in the present case. Thus, the trial

Court has passed the impugned order dated 21.05.2022 wrongly, illegally and against the provisions of Order 6 rule 17 CPC, for, it has no jurisdiction to allow amendments of pleadings after commencement of trial. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament *inter alia*, inserted proviso to Order 6 Rule 17 of the Code. It is couched in a mandatory form. The Court's Jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. In the present case, the Ld. Trial Court has passed the impugned non-speaking order without consideration of the pleadings and returned no finding as required under Order 6 Rule 17, CPC.

15. Before parting, reference may be made to another relevant judgment in the case of ***J. Samuel*** (supra), wherein 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***

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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.”

16. It is thus, clear that the trial Court is in manifest error in allowing the amendment application of respondent No.1.

17. Hon’ble Supreme Court in ***“Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others” Civil Appeal No.6921 of 2009***, has further cautioned that “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*”.

18. In my view, it is adequately demonstrated hereinabove, that the respondent’s case does not fall within the abovesaid parameters laid down by the provision, and/ or the law laid down by the Hon’ble Supreme Court in this regard. Accordingly, present revision petition is allowed and impugned order dated 21.05.2022 passed by the trial Court is set aside.

01.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No