

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-66-2024 (O&M)
Decided on :16th January, 2024

Gurinder Kaur and Another

...Petitioners

Versus

Dilsher Singh and Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sunny K. Singla, Advocate
for the petitioners.

RITU TAGORE, J

1. This revision petition is directed against the order dated 3.10.2023 (Annexure P-4), handed down by learned Civil Judge (Junior Division), Nabha, whereby allowed the application for amendment of plaint under Order 6 Rule 17 CPC read with Section 151 CPC, in civil suit bearing no CS 429 of 2021 titled Dilsher Singh &Anr Vs Punjab State Power Corporation Ltd & Ors.
2. For easy understanding, parties shall be referred to by their original status in the suit.
3. Learned counsel for the petitioners, (who are defendants No.4 to 5 before the learned lower Court) urges that plaintiffs No.1 and 2 (respondents in the revision), filed a suit for declaration seeking a decree to be declared as owner-consumers with 2/3rd share in electric

motor bearing connection No.AP-338 of 15 BHP along with the bore, kotha, electric appliance and other article used to operate the electric motor for irrigating purposes installed in the land as detailed in the head note of the petition, situated at village Salluwal, Tehsil Nabha, District Patiala, with further relief of permanent injunction restraining defendants from disconnecting, transferring, alienating the aforesaid electric motor connection in the name of others or shifting from its present location to some other place or interfering in their peaceful use of 2/3rd share of aforesaid electric connection bearing No.AP-338 along with other electric appliances etc.

4. The learned counsel submits that it is specific case of plaintiffs that they are using 2/3rd share in electric motor bearing No.AP-338 of 15 BHP as owners. The defendants, who have purchased share of Darwara Singh has no authority to use electric connection beyond their 1/ 3rd share.
5. Addressing further, learned counsel submits that plaint specifically mentions that Hazara Singh had four sons, who jointly owned 216 Kanals of agriculture land and had three electric connections to irrigate their fields. Among them, two electric connections, No.AP-338 & AP-339 were in Darbara Singh's name and one was in Hazara Singh's name. Further, according to the plaintiff's specific assertions, use of electric motor no AP-338 situated at village Salluwal, in a family settlement was given in ratio of 2 parts to Ranjeet Singh and one part to Darbara Singh and second motor No.AP-339 installed in village Rajgarh, was given to Darbara Singh, Mohinder Singh and

Ujagar Singh. The plaintiff No.1 purchased share from Darbara, thereby holding 2/3rd share in use of motor.

6. The learned counsel urges that defendants apart from denying other allegations, explicitly pleaded in their reply the existence of two separate electric motor connections bearing No.AP-338 and AP-339 and further asserts that plaintiffs never moved any application to transfer electric motor bearing connection No.AP-338 in their name.
7. Learned counsel submits that when the plaintiffs filed the suit, they were aware of the existence of electric motors and sought a declaration for motor No.AP-338 and specifically pleaded that, in family settlement, the share of said motor came into their possession. The plaintiffs now by way of amendment of the plaint, seek to change the nature of the suit and their claim, which they cannot be permitted to do so. The defendants have raised specific objections in this regard, but learned lower Court failed to appreciate the same.
8. It is contended by the learned counsel that the learned lower Court failed to notice that mistake was not an inadvertent typographical error but a deliberate act, whereby plaintiffs changed the cause of action of their suit and withdrew their initial submissions made in the suit, causing serious prejudice to the defendants. The learned counsel also submits that learned lower Court overlooked the provisions of procedural law that debars the plaintiffs to amend the plaint by way of withdrawal of a suit already set up and does not permit new cause of action. The counsel thus states that order is arbitrary and should be set aside.

9. I have considered the submissions of learned counsel and have gone through the paper-book.
10. The learned lower Court allowed the application, relying on the observations made in Baldev Singh and Others vs. Manohar Singh and Another 2006(6) SCC 498, the respective pleadings of the parties and provisions of Order 6 Rule 17 CPC, and concluded that Court has power to amend the pleadings, when mistake has occurred despite due diligence exercised by the party and when such an amendment is deemed necessary for effective determination of the ongoing controversy. The learned Court stated as follows :-

“The perusal of file shows that the present case is at an initial stage and no issues have been framed at present case. Moreover, relief claimed by the plaintiff is of such nature that it is essential to be determined so as to effectively decide the case on merits and there is probability that it was a typographical mistake. The Court therefore finds merits in the application of the plaintiffs and hereby allowed the amendment made in the plaint. Accordingly, this application is hereby allowed.”

11. At this juncture , it is appropriate to go through the amended provisions of Order 6 Rule 17 CPC, which reads as under:-

“**17 Amendment of pleadings.**-The court may at any stage of the proceedings allow either party to alter or amend his pleading 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”

12. Hon’ble Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another, 2023(1) RCR (Civil) 851**, explained the position of law on Order 6 Rule 17 CPC as under:-

"70. (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)”

13. Similarly in **North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) By LRs (2008) 8 SCC 511**, Hon’ble Supreme Court has observed in the following terms:-

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. *In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* [(1990) 1 SCC 166] .)"

14. The above observations were reiterated by Hon’ble Supreme Court in **P.A. Jayalakshmi vs. H. Saradha and Others reported in (2009) 14 SCC 525** and held as under:-

“9. By reason of the Code of Civil Procedure (Amendment) Act, 1976, measures have been taken for early disposal of the suits. In furtherance of the aforementioned parliamentary object, further amendments were carried out in the years 1999 and 2002. With a view to put an end to the practice of filing applications for amendments of pleadings belatedly, a proviso was added to Order 6 Rule 17 which reads as under:

"17. Amendment of pleadings.-The court may at any stage of the proceedings allow either party to alter or amend his pleading 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.”

15. In the light of judicial precedents dealing with the provisions of Order 6 Rule 17 CPC, there appears no doubt or dispute that Court should be liberal in allowing application for leave to amend the pleadings, but it is also well-settled rule that Court must bear in mind the statutory limitation brought by reason of CPC amendment Acts, the proviso appended to the Order 6 Rule 17 CPC being one of them.

16. At this stage, I would like to refer to the decision of Hon'ble Supreme Court in **State of Madhya Pradesh vs. Union of India and Another reported in (2011) 12 SCC 268**, which is as under:-

“8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

17. Coming to the facts of the present case as evident from the impugned order the suit was at the initial stage, where issues have not been framed when the application for amendment was moved. The aforesaid factual aspect has not been denied by the petitioners. The amendment sought is not of the nature that would change the nature of the suit. The learned lower Court observed that amendment is necessary for proper and effective adjudication of the controversy between the parties. Furthermore, the plaintiffs have explained that electric motors bearing Nos.AP-338 and 339 belonged to family members, that led to the mix-up in motor numbers. The motor No.AP-338 was wrongly mentioned in place of 339 in the head-note of the plaint, para No.2, 6 and 7 of the body of complaint as well as in the prayer clause. Similarly, 339 has been mentioned in place of 334 and third connection No.AP-342 with AP-344.

18. In my opinion , the amendment is rather clarificatory in nature and does not amount to withdrawal of the admission or change in the nature of the suit ,as pleaded by the petitioners. Furthermore, the defendants would have an opportunity to reply to the amendment made by the plaintiffs. In the overall context of the matter, I am convinced that impugned order passed by learned lower Court should not be disturbed, as same appears just and valid in the eyes of law.
19. In the result, revision fails and is hereby dismissed with no other as to costs.
- 20 . Pending miscellaneous applications, if any, stand disposed of accordingly.

16.01.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No