

CR-246-2019(O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CR-246-2019(O&M)

Nirmala

... Petitioner

Versus

Shiv Lal (Deceased) through his legal heirs and others

... Respondents

2. CR-248-2019(O&M)

Nirmala

... Petitioner

Versus

Shiv Lal (Deceased) through his legal heirs and others

... Respondents

Date of decision : 22.07.2024

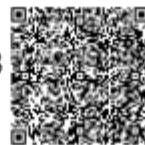
CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Ajay Jain, Advocate
for the petitioner.

Mr.Navmohit, Advocate
for LR's of respondents no.1.

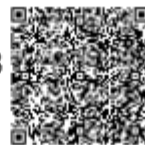
VIKAS BAHL, J.(ORAL)

1. This order will dispose of two civil revision petitions challenging two orders arising in the same proceedings. The first revision petition i.e., CR-246-2019 has been filed by the petitioner Nirmala challenging the order dated 10.12.2018 passed by the Civil Judge (Junior

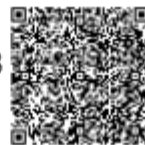
**CR-246-2019(O&M)****2**

Division), Hisar vide which the application filed by the plaintiff-petitioner for amendment of plaint under Order 6 Rule 17 CPC has only been partly allowed. The second revision petition i.e., CR-248-2019 has been filed by the plaintiff-petitioner Nirmala challenging the order dated 10.12.2018 passed by the Civil Judge (Junior Division), Hisar vide which application filed by the plaintiff-petitioner for permission to produce certified copies of documents by way of additional evidence has also only been partly allowed.

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for declaration to the effect that the decree dated 09.03.1991 passed in Civil Suit no.225-C of 1991 in favour of predecessor in interest of the defendant is illegal and not binding upon the plaintiff and for possession and had also sought consequential relief of injunction on 22.01.2015 with respect to land measuring 50 kanals situated at village Bir, Hisar, District Hisar. It is submitted that the issues in the said case were framed on 28.09.2015 and the plaintiff evidence was closed on 08.04.2016 and thereafter, defendant evidence was also closed on 27.02.2017. It is further submitted that a part of the said suit land i.e., land measuring 18 kanals 9 marlas was acquired by the National Highway Authority of India and during the pendency of the suit, the possession of the land was also taken and thereafter on 17.02.2017, compensation of an amount of Rs.2,24,69,510/- along with interest was received by the defendant. It is stated that an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of plaint was filed by the petitioner in which three amendments were sought. The learned trial Court vide order



dated 10.12.2018 had permitted the petitioner to make two amendments which were proposed in paragraph 4 (i) and (ii) of the application but did not permit the petitioner to make the amendment which was proposed in paragraph 4 (iii) of the application on the ground that the said issue related to the dispute regarding apportionment of the amount deposited by the Central Government for the acquisition of the land and the said plea could not be raised in view of the provisions of Section 3(H)(4) of the National Highways Act, 1956. It is argued that the rejection of the application qua permitting the petitioner to carry out the third amendment was illegal on two grounds. It is submitted that it is a matter of settled law that at the time of considering amendment of pleadings, the merits of the amendment sought are not to be seen or adjudicated upon and it is only the necessity of the amendment which is to be seen. It is argued that the amendments are necessary for determining the real question in controversy between the parties and that in case the decree under challenge is held to be illegal, then the consequential reliefs, including the relief of return of compensation, received by the respondents are required to be granted to the plaintiff. It is submitted that the delay if any caused would only harm the plaintiff inasmuch as it is the plaintiff who is seeking possession of the property in question. It is further argued that even the observation in the impugned order on merits is also against law, as it has been repeatedly held by this Court that where a question of title is to be adjudicated, the jurisdiction of the civil court cannot be stated to be barred. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of Single

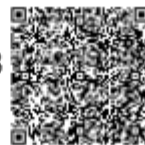


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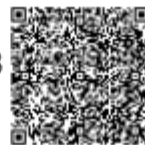
Bench of this Court in the case of *Shyam Lal and others vs. Sham Lal and others* reported as **2007(2) RCR (Civil) 484** and also on the judgment of the Division Bench of this Court in Civil Revision no.1748 of 1988 titled as **“Malkiat Singh vs. Harnek Singh” decided on 14.08.1991**. It is further argued that once the Court had allowed the petitioner to make two amendments, the Court should have necessarily allowed the petitioner to make the third amendment also and the respondent could have been permitted to file amended written statement and raise all pleas / objections in the same and the case would have been decided in totality at the time of the final judgment and not at the stage of deciding the application under Order 6 Rule 17 CPC.

3. With respect to CR-248-2019, it is submitted that the petitioner had moved an application for permission to produce certified copies of the (i) application for setting aside order dated 04-10-2016 passed in case titled as Nirmala Versus State of Haryana and others, (ii) certified copy of the affidavit of Sh. Rajat Kalsan, Advocate, Hisar, (iii) reference under section 3 H (4) of The National Highways Act, 1956 sent to the court of Sh.Jaibir Singh, ADJ, Hisar vide Case No. 11/LA dated 19-05-2015, (iv) certified copy of the Land Acquisition Award dated 30-01-2015, (v) certified copy of the order dated 04-10-2016, (vi) certified copy of the application for restoration of the above mentioned reference dismissed in default on 04-10-2016, (vii) certified copy of the application for putting up the original case file and (viii) for attestation of the indemnity bond as per order dated 14-02-2017, and (ix) certified copy of the indemnity bond filed in LA Case No. 11



of 2015, by way of additional evidence. It is submitted that the said application was also partly allowed vide impugned order dated 10.12.2018 and the petitioner was only permitted to produce one document, which was certified copy of land acquisition award dated 30.01.2015 and rest of the documents, which although were part of the judicial record, were not permitted to be produced. It is submitted that the said documents were not permitted to be produced on account of the fact that the application for amendment of the plaint filed by the petitioner had been dismissed and since the petitioner was not permitted to make the third proposed amendment, thus, it was observed in the impugned order that the documents, which were proposed to be adduced in evidence, were not relatable to the cause of action of the case. It is prayed that the said order also deserves to be set aside and that the petitioner be given an opportunity to produce the relevant documents in support of all the pleas raised in the amended plaint.

4. Learned counsel for LR's of respondent no.1 in both the petitions has opposed both the revision petitions and has submitted that the petitioner had filed a reference under Section 3(H)(4) of the National Highways Act, 1956 and the said reference of the petitioner had been rejected vide order dated 14.02.2017 by the Additional District Judge, Hisar and that the petitioner had further filed an application for setting aside the ex-parte proceedings before the Additional District Judge, Hisar and thus, the petitioner is barred by principle of res judicata to raise the plea as sought to be raised in the third amendment for recovery of compensation. It is

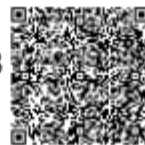
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submitted that at any rate, the plaintiff should have made a prayer for recovery of the said amount and in the absence of any such prayer made, no relief can be granted to the plaintiff. It is further submitted that in case the compensation amount is to be paid to the plaintiff or his prayer is to be decreed, then it is incumbent upon the plaintiff to pay court fee, which has not been done in the present case.

5. With respect to CR-248-2019, it is stated by learned counsel for LR of respondent no.1 that the documents sought to be produced were not relevant for the purpose of adjudication of the present case.

6. This Court has heard the learned counsel for the parties and has perused the paper book of both the revision petitions.

7. It is not in dispute that the petitioner Nirmala had filed a suit for declaring the decree dated 09.03.1991 in favour of the predecessor in interest of the defendants to be illegal, null and void. The said decree was with respect to land measuring 50 kanals at village Bir, Hisar, District Hisar. A further prayer for possession was also made in the said suit, which was filed on 22.01.2015. It is the case of the plaintiff-petitioner that the land measuring 18 kanals 9 marlas out of the suit land had been acquired by the government and the possession of the same had been taken and a compensation of Rs.2,24,69,510/- was paid to the defendant on 17.02.2017, i.e., after filing of the suit and after the issues had been framed in the present case on 28.09.2015. On account of the said subsequent facts, the following amendments were proposed by the plaintiff-petitioner by moving an application under Order 6 Rule 17 CPC read with Section 151 CPC:-



“(i) The words in the Head note at Page No. 2 are to be inserted as follows:-

"Suit land except land measuring 18 Kanals 9 Marlas comprised in Khasra No. 1081//12/2/2 (0-9), 1081//13/2 (2-0), 18/2/2 (3-5), 19/1 (4-8), 21/2 (0-6), 22/2 (7-1), 23/1/1 (0-10)"

(ii) The same above wording is to be incorporated in the prayer clause as the prayer is the repetition of head note.

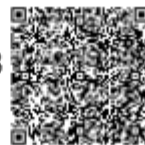
"Suit land except land measuring 18 Kanals 9 Marlas comprised in Khasra No. 1081//12/2/2 (0-9), 1081//13/2 (2-0), 18/2/2 (3-5), 19/1 (4-8), 21/2 (0-6), 22/2 (7-1), 23/1/1 (0-10)"

(iii) Para No. 10A is to be inserted after Para No.10 which would read as under:-

"10A. That during the pendency of the suit out of disputed land measuring 50 Kanals, land measuring 18 Kanals 9 Marlas fully detailed in the Head Note of the plaint has been acquired by the State i.e. defendant No. 6 and 7 and thereafter even possession was taken. Compensation amounting to Rs. 2,24,59,510/- stands deposited. Plaintiff are entitled to recover the amount of compensation regarding 18 Kanals 9 Marlas of land and possession in respect of 31 Kanals 11 Marlas of land from the legal heirs of Shiv Lal as these defendants have no right, title or interest in the suit land and amount of compensation."

The said amendments were sought to be incorporated /made being necessary in view of the fact that a part of the suit land had been acquired and stood vested in the State and compensation regarding the same had been paid to the private defendants. The Civil Judge (Junior Division),

Hisar vide order dated 10.12.2018 allowed the plaintiff-petitioner to make

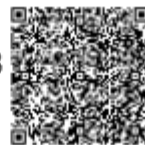


proposed amendments as mentioned in paragraph 4(i) and (ii) of the application and did not permit the plaintiff-petitioner to make amendment proposed in paragraph 4(iii) of the application by considering the merits of the dispute. The relevant portion of the impugned order dated 10.12.2018 with respect to the application for amendment is reproduced hereinbelow:-

“5. However, proposed amendment of para No.4(iii) of the application cannot be allowed as the same relates to the dispute regarding apportionment of the amount deposited by the Central Government for the acquisition of the land. Section 3(H)(4) of the National Highways Act, 1956 provides that " if any dispute arises as to the apportionment of the amount of any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. Therefore, as per Section 3(H)(4) of the Act, this Court cannot decide any dispute in this regard. The plaintiff may go to the competent principal civil court for any remedy in this regard.”

A perusal of the impugned order would show that instead of considering as to whether the amendment was necessary for determining the real question in controversy between the parties, the trial Court had gone into the merits of the amendment made and had rejected the said amendment after coming to the conclusion that as per Section 3(H)(4) of the National Highways Act, 1956, the Court could not decide the said aspect.

8. It is a matter of settled law that at the time of deciding the application for amendment under Order 6 Rule 17 CPC, the Court is not required to adjudicate the plea proposed and is primarily required to



consider as to whether the amendments are necessary for determining the real question in controversy. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.*** reported as ***2006(2) RCR (Civil) 577***. The relevant portion of the said judgment is reproduced hereinbelow:-

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

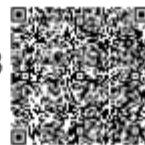
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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by



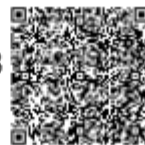
the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.

9. This Court is of the opinion that the said amendment is necessary for proper and final adjudication of the case inasmuch as the land, which had been acquired, is a part of the suit land and thus, it is open to the plaintiff-petitioner to put his entire case with respect to the suit land in the civil suit. The trial Court has not considered the said important aspect while passing the impugned order. It would be open to the defendant-respondent to file amended written statement to the said amended plaint and raise all pleas as are available to them in law including the plea based upon decision dated 14.02.2017 passed by the Additional District Judge, Hisar and all such pleas would be duly considered by the trial Court at the time of finally adjudicating the matter. Allowing the petitioner to take all pleas as proposed cannot be construed to be adjudicating the said pleas in favour of the plaintiff-petitioner on merits. Learned counsel for the petitioner has tried to impress upon this Court that even the observation made by the trial Court on the merits of the proposition as to whether the civil suit would be barred or not, is also incorrect and reference has been made to several judgments in this regard including the judgment of Single Bench of this Court in the case of ***Shyam Lal and others (supra)*** and the judgment of the Division Bench of this Court in the case of ***Malkiat Singh(supra)*** to argue that in the facts and circumstances of the present case, the jurisdiction of the Civil Court even with respect to the third plea would not be barred. This Court does not wish to go into the merits of the said plea and does not wish to give any



opinion on the merits of the plea as the same would prejudice the case of either of the two parties at the time of final decision of the case and would also be against the law laid down by the Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal (supra)***. Once the two amendments i.e., 4(i) and (ii) had already been allowed by the trial Court, the trial Court should have allowed the third proposed amendment as stated in paragraph 4(iii) of the application as well so as to permit the plaintiff to present his entire case moreso, when it is not in dispute that the compensation amount has been paid to the private defendants with respect to a part of the suit land, during the pendency of the suit. It would also be relevant to note that a Coordinate Bench of this Court, at the time of issuance of notice of motion on 16.01.2019 was also further pleased to direct the trial Court to adjourn the proceedings beyond the date fixed by this Court and the said interim order has continued till date.

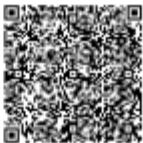
10. With respect to the impugned order dated 10.12.2018, which is the subject matter of challenge in CR-248-2019, it would be relevant to note that the petitioner had sought to produce certified copies of the application/orders etc. as has been detailed in paragraph 3 of the present order which were a part of the judicial proceedings culminating into the passing of the Award dated 30.01.2015 and also with respect to the proceedings culminating into the passing of the order dated 14.02.2017. The order dated 14.02.2017 of the Additional District Judge, Hisar has also been relied upon by the learned counsel for LR of respondent no.1 to contest the application for amendment under Order 6 Rule 17 CPC. The trial Court vide impugned



order has already permitted the petitioner to produce on record the Award dated 30.01.2015. The other documents are also part of the judicial proceedings and are necessary for final and proper adjudication of the present case. This Court has already observed that the application under Order 6 Rule 17 CPC filed by the petitioner deserves to be allowed in its totality and in view of the fact that evidence of the parties is already over, this Court proposes to grant two effective opportunities to both the parties to lead evidence including documentary evidence in support of the additional pleas taken in the amended plaint and amended written statement and thus, keeping in view the same, the petitioner also deserves to be permitted to produce on record all relevant documents including the documents as referred to in the application on which the impugned order dated 10.12.2018 has been passed. The same would however be, subject to the plaintiff-petitioner producing the same by availing two effective opportunities only.

11. Keeping in view the above said facts and circumstances, both the present revision petitions are partly allowed and the impugned orders in both the cases to the extent that the prayer of the petitioner has been rejected therein are set aside with the following directions:-

- i) The plaintiff-petitioner would be permitted to file an amended plaint within a period of two weeks from the date of the receipt of the certified copy of the present order incorporating all the proposed amendments.
- ii) Liberty would be granted to the defendant to file an amended



written statement to the said amended plaint raising all the pleas as are permissible to them in law within a period of three weeks from the date the amended plaint is filed.

iii)It would be open to the trial Court to frame additional issues including issues of res judicata, jurisdiction and court fee etc. as are necessary on the basis of amended pleadings within a period of two weeks from the date of filing of the amended written statement.

iv)The plaintiff as well as the defendant would be given two effective opportunities each to lead evidence including documentary evidence in support of the additional pleas taken in the amended plaint and in the amended written statement.

v) Parties are directed to appear before the trial Court on 05.08.2024.

12. It is made clear that this Court has not opined on the merits of the amendment sought and it would be open to all the parties to raise all pleas as are available to them, which would be considered at the time of final adjudication of matter.

13. Pending application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

July 22, 2024
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No