

**CR-308-2024 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR-308-2024 (O&M)****Date of Decision: 08.08.2024****SUKHWINDER KAUR****... PETITIONER****VS.****TARANJEET KAUR****.. RESPONDENT****CORAM: HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Deepak Arora, Advocate,
for the petitioner.

Mr. Manoj Kumar Sharma, Advocate
for the respondent.

***********RITU TAGORE, J.**

1. This revision is directed against the order dated 10.11.2023 (Annexure P-5) passed in Civil Suit No. 1478-2021 instituted on 25.08.2021, whereby, the learned Civil Judge (Jr. Division), Gurdaspur, dismissed the application (Annexure P-3) for the amendment of the plaint under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC').

2. Learned counsel contends that by amendment in the plaint (Annexure P-1), the petitioner wants to add the relief of recovery of Rs.10 lakh from the defendant and related additions in the plaint, for the complete and proper adjudication of the matter in controversy.

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3. Learned counsel further submits that the learned trial Court dismissed the application primarily on the ground that the amendment will change the nature of the suit from mandatory injunction to a recovery suit, that is not permissible under the law. While relying upon the judgment titled as **Sampath Kumar vs. Ayyakannu and another, 2002 (4) RCR (Civil) 566**, submits that it is a trite law that all the amendments which are necessary for the purpose of determining real questions in the controversy between the parties should be allowed, if it does not change the basic structure of the suit. It is submitted by learned counsel that the petitioner/plaintiff has already raised the plea with respect to the respondent/defendant had taken away Rs.10 lakh from her under the pretext of studying abroad and also took valuable articles alongwith her, as detailed in the plaint. However, the petitioner has reserved her right to seek recovery of the aforesaid amount. It is stated by learned counsel that in given facts, the amendment will not change the nature of the suit; rather it will help in deciding the controversy comprehensively and would prevent multiplicity of litigation between the parties. The learned counsel further submits that claim of recovery as on the date of filing of the suit was not time barred. However, learned trial Court took a very rigid and restricted view of the provisions of law related to amendment, which is contrary to the settled judicial precedents, which speaks of adopting liberal approach by the Courts while dealing with the amendments of the pleadings. Therefore, a prayer is made to set aside the impugned order with

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prayer to allow the application under Order 6 Rule 17 read with Section 151 CPC of the plaint.

4. Contrarily, learned counsel for the respondent/defendant supported the impugned order (Annexure P-5) stating that the same is validly passed after considering the facts which had the tendency to change the nature of the suit, which is impermissible under the law. In support of his arguments, he referred to the authorities titled as **M. Revanna Vs. Anjanamma (Dead) by Lrs and Ors, 2019 (2) RCR (Civil) 207** and **Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012 (4) RCR (Civil) 481**. A prayer is made to dismiss the petition, lacking merits.

5. I have heard learned counsel for the parties and have gone through the record with their valuable assistance.

6. It is a matter of record that the petitioner/plaintiff, filed a suit for permanent injunction against the respondent/defendant, which is pending adjudication before learned trial Court. For ready reference, the relevant extract of the suit filed by the petitioner/plaintiff is reproduced as under:-

“Suit for Mandatory Injunction to the effect that defendants be directed to handover service record of Late Sukhwinder Singh and valuable articles etc. to plaintiff.”

XXXXXXX.....

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4. That, defendant by playing clever tactics prior to solemnizing marriage with Naresh Kumar taken from applicant Rs.Ten lakh for study abroad. Defendant also taken along with her valuable house hold articles, 2 gold rings, 1 gold chain, service record of deceased husband of plaintiff.

5.That, plaintiff transferred the said amount in the account of defendant on 12/01/21, thereafter she ran with Naresh Kumar.

6.That, defendant abused the plaintiff and defamed her in the society.

7. XXXX...

8. XXXX...

9. XXXX...

10.That, plaintiff is entitle for getting her money back from defendant who fail to fulfill her part of assurance that she will study abroad and use this money as fee. Plaintiff will initiate separate proceedings for getting her money back.

11.That, plaintiff require the said money for her livelihood and for her daily needs.

XXXX....

It is, therefore, prayed that a decree of for Mandatory injunction may please be passed in favour of plaintiff and



against defendants to the effect that defendant be directed to handover service record of Late Sukhwinder Singh and valuable articles etc. to plaintiff, in the interest of justice.”

7. It is explicit that petitioner filed an application under Order 6 Rule 17 read with Section 151 CPC (Annexure P-3) with averments, detailed here-in-below:-

1. XXXX...

2. That, in the head note of plaint at the end of word plaintiff, applicant want to write that “defendant be directed to pay Rs.10 lakh along with interest to plaintiff.” And in the prayer clause at the end of word plaintiff want to insert that “defendant may please be directed to pay Rs.10 lakh along with interest to plaintiff.” Plaintiff also want to amend the para no. 4 of the plaint and at the end of the para want to write that plaintiff is also entitle to recover her money Rs. 10 lakh from defendant.

3. That, amendment sought is required for proper adjudication and justification of the matter in question.

4. That, applicant also want to affix the court fee as per the value and jurisdiction of the case amounting to Rs.10 lakh in the amended plaint.

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8. Learned trial Court dismissed the application observing as under:-

*“Heard. Bare perusal of the file reveals that plaintiff has filed suit for mandatory injunction to the effect that defendant be directed to hand over service record of late Sukwhinder Singh and valuable article etc to the plaintiff. Now, the plaintiffs/applicants want to amend the plaint by adding relief of recovery of Rs.10 lakh from the defendant. It is settled proposition of law that amendment sought by the party should be allowed only, if it does not change the basic nature of the suit. The court is of the considered opinion that proposed amendment would change the nature of the suit. Therefore an application under Order 6 Rule 17 CPC moved by applicants is hereby dismissed. In support of my observation, I draw support in this regard from case law titled as **Abdul Rehman and another versus Mohammad Ruldu and others. 2012 (4) RCR (Civil) 481 (SC).**”*

9. Based on the averments made in the plaint, it is evident that the petitioner/plaintiff had already asserted the claim regarding the respondent's appropriation of the amount of Rs.10 lakh from her. Although, the petitioner initially filed a suit for mandatory

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injunction, however, reserved her right to seek recovery of the amount in question through separate legal proceedings against the respondent. Subsequently, the petitioner sought amendment of the plaint through the present application. Given that the foundational facts for recovery of amount have already established in the plaint, therefore, the reasoning adopted by the learned trial Court that amendment would change the nature of the suit, is untenable. Further, the relief of recovery cannot be said to be barred by limitation, if taken from the date of filing of the suit. It is also not in dispute that the relief sought by the petitioner by way of amendment could also be claimed by her by way of separate suit on the date of filing of the application. So in these circumstances, this Court is satisfied that the relief as claimed by the petitioner by way of amendment will not prejudice the respondent. Further, it is settled position of law that if granting of an amendment really sub-serves the ultimate cause of justice and avoid further litigation, same should be allowed. The learned trial Court, however, erred in dismissing the application by placing reliance on **Abdul Rehman and another versus Mohammad Ruldu and others, 2012 (4) RCR (Civil) 481.** In the aforesaid judgment, it has been observed that, a change in the nature of the relief claimed shall not be considered as a change in the nature of the suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

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10. In the light of the aforesaid judgments and various principles, which have been filtered through the judicial pronouncements and the factual matrix of this case as discussed above, this Court is of the view that the petitioner has made out a case for amendment of the plaint, and by allowing the same, the respondent, in no way, is prejudiced. Further, she is entitled to file additional written statement, if she so desired. Accordingly, the order of the learned trial Court is set aside and the application for amendment is allowed.

11. Pending application(s), if any, shall also stands disposed of.

08.08.2024
smriti

(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No