

222.

2024:PHHC:012983

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.7704 of 2015

Date of decision: 30.01.2024

Pushpa Devi Sharma and others

... Petitioners

Versus

Kamla Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Arun Jindal, Advocate, for the petitioners.

None for the respondent.

GURBIR SINGH, J.

Pursuant to order dated 05.10.2023, Registry has informed Mr. Vikas Mehsempuri, Advocate, representing the respondent, through email, but no one has put in appearance on behalf of the respondent.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 15.10.2015 (Annexure P-5) passed by learned Civil Judge (Junior Division), Patiala, vide which, the application filed by the petitioners-defendants under Order 6 Rule 17 read with Section 151 CPC for amendment in written statement, has been dismissed.

2. Learned counsel for the petitioners submits that both Jagdish Ram Sharma and his son Shavinder Kumar met with an accident. Jagdish Ram Sharma died on way to hospital whereas Shavinder Kumar had died in the emergency of the hospital. So, the petitioner just

want to explain the same that Jagdish Ram Sharma died first and Shavinder Kumar died afterwards.

3. I have heard the submissions of learned counsel for the petitioners and have gone through the file.

4. In case ***Life Insurance Corporation of India Versus Sanjeev Builders Private Limited and another, 2022 AIR (Supreme Court) 4256***, the law of amendment has been summed up as under :-

“70. Our final conclusions may be summed up thus:

- (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*
- (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 pin-pointedly 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**).”*

5. The proposed amendment will neither change the nature of the case nor change the cause of action. It is just an explanatory in nature. No doubt, the petitioners have moved the application at a belated stage, posing hardship to the plaintiffs but that cannot be considered as a ground to reject the application. The petitioners can be burdened with costs.

6. In view of above, the present revision petition is allowed. The order dated 15.10.2015 (Annexure P-5) is hereby set aside, however, with cost of Rs.5,000/- to be paid to the respondent-plaintiff.

(GURBIR SINGH)
JUDGE

January 30, 2024

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No