

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2535-2024
Date of Decision: 26.04.2024

PALWINDER SINGHPETITIONER

VS

SWARAN SINGH AND ANRRESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vinod K.Kaushal, Advocate for the petitioner.

GURBIR SINGH, J.

1. Challenge in this petition is to the order dated 18.01.2024 (Annexure P-1) passed by learned Civil Judge (Junior Division) Ajnala, whereby application moved by the plaintiff-respondent under Order 6 Rule 17 CPC for amendment of plaint was allowed.
2. Brief facts which are necessary for the disposal of this petition are that plaintiff-respondent filed a suit for specific performance and for execution of sale deed and also for permanent injunction and in the alternative suit for recovery of additional earnest money. The defendant-petitioner contested the suit and filed written statement that agreement to sell dated 07.09.2016 is the result of fraud. After framing issues, four witnesses have already been examined. The plaintiff/respondent moved an application for amendment of the plaint after trial of the case has been started. There is no explanation that despite due diligence, plaintiff could not amend the plaint earlier. There is no explanation for such delay in filing the

application. Reliance has been placed on case Pandit Malhari Mahale Vs. Monika Pandit Mahale (2020) 11 SCC 549, an authority of Hon'ble Supreme Court.

3. I have heard the submissions made by the learned counsel for the petitioner.

4. The plaintiff/respondent want to add para No. 10-A, 10-B in the plaint. The proposed amendment is basically with regard to the fact that the defendant/petitioner suffered a statement on 19.09.2019 and admitted the claim of the petitioner that he had entered into the agreement to sell on 07.09.2016 with the plaintiff regarding suit property and ready to execute the same in favour of the plaintiff. The plaintiff and defendant appeared in the Tehsil Complex Ajnala. The sale deed was also drafted. The defendant/petitioner received remaining amount of consideration of Rs.5 lacs in presence of the witnesses but sale deed could not be registered as one Joga Singh had filed the suit regarding suit property against the petitioner and got the stay order that suit property could not be alienated. Then defendant/petitioner promised to settle the dispute with Joga Singh and then to execute sale deed and writing to that effect was also made in the presence of the witnesses and defendant-petitioner handed over the possession of the suit property to the plaintiff. Joga Singh thereafter also withdrew his suit. It is submitted that the proposed amendment is with regard to the subsequent events which had taken place during the pendency of the suit so proposed amendment is necessary for just decision of the case. Any amendment which is necessary for just decision of the case can be allowed.

4.1 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 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).”

5. In the light of the above, I do not find any illegality in the order passed by the learned Court below. The revision petition is without merit and it is dismissed in limine.

26.04.2024
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(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>