

**CR-2908-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(117)****CR-2908-2024****Date of Decision: - 09.09.2024****Brij Mohan Kapoor****....Petitioner****Versus****Pushpa Mahajan****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Dinesh Mahajan, Advocate,
for the petitioner.

**********VIKAS BAHL, J. (ORAL)**

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 13.03.2024 passed by the trial Court vide which the application filed by the respondent/plaintiff seeking amendment of the plaint has been allowed.

2. Brief facts of the case are that the respondent-plaintiff had filed a suit for mandatory injunction directing the defendant to close the doors opened at point X, Y & Z on first, second and third floor as shown in red colour in the building marked as ABCD in blue colour in the site plan annexed with the plaint. A written statement was filed by the defendant-petitioner in which it was averred that the plaintiff was a tenant in the shop in dispute and thus, the possession of the plaintiff was not



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disputed. On 25.05.2022, an application was filed by the respondent/plaintiff for amendment of the plaint and in the said application, it was stated that the case was fixed for the evidence of the plaintiff and during the pendency of the suit, about a week before filing the application, the defendant had refused to allow the plaintiff from raising a wall from point C to point B up till the third floor of the building in question and in view of the said fact, the following amendments in the plaint were sought:-

“a) Suit for permanent injunction restraining the defendant from obstructing the plaintiff from raising wall from point C to B up till third floor of the building of defendant so as to block the ventilator and openings at point XYZ.

*b) In the fourth line of para 4 of plaint after the words “to file present suit” following para needs to be added “**And a week ago also plaintiff had requested the defendant to not obstruct him from raising wall from point B to see up till third floor** so as to close the openings at point XYZ but the defendant had refused to allow the plaintive to do the same due to which cause of action had accrued to the plaintive to seek relief of permanent injunction against the defendant.*

*c) In the last of prayer clause following para needs be added" **AND decree for permanent injunction restraining the defendant from obstructing the plaintiff from raising wall from point C to point B up till third floor of the building of defendant so as to block the ventilator and openings at point XYZ"***

3. In the reply filed to the said application under Order VI Rule 17 read with Section 151 CPC, the fact that the case was fixed for evidence of the plaintiff was stated to be a matter of record. The amendment sought was opposed on merits. The trial Court vide order



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dated 13.03.2024 allowed the said application for amendment of the plaint and observed that as per the averments made in the application, the cause of action for permanent injunction arose during the pendency of the case and thus, there was sufficient ground to allow the said application. It was further observed that the plaintiff was the master of his suit and thus, it was for him to choose the relief he wanted to seek against the other party and since the petitioner/defendant would get an opportunity to file an amended written statement, thus, no prejudice would be caused to the petitioner. It is the said order dated 13.03.2024, which has been challenged in the present revision petition.

4. Learned counsel for the petitioner-defendant has submitted that as per the case of the petitioner, the respondent is a tenant and a tenant cannot dictate terms to the landlord and he has no right to raise construction of any wall over the property/shop, which is under the tenancy of the respondent. It is submitted that the additional prayer sought to be made by virtue of the impugned order is not liable to be granted as the same is meritless and thus the impugned order deserves to be set aside and the application for amendment deserves to be rejected.

5. This Court has heard learned counsel for the petitioner and has perused the paper-book.

6. The Hon'ble Supreme Court in the case of "***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.***" reported as ***2006(2) RCR (Civil) 577*** had observed that all amendments that may be necessary for determining the real question in controversy between the parties should be



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allowed and the Court while allowing the amendment should not go into the correctness or falsity of the case set up in the amendment, as it is not required to record a finding on the merits of the amendment and the merits of the amendment are not required to be adjudged at the stage of allowing the prayer for amendment. 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.

xxx xxx xxx

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.

xxx xxx xxx

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



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***Kumar vs. Ayyakannu and Another ,
(2002) 7 SCC 559.”***

7. In the present case, the respondent/plaintiff had filed a suit for mandatory injunction directing the defendant/petitioner to close the doors opened at point X, Y & Z on first, second and third floor. The said suit was filed in the year 2021. In the written statement, the possession of the plaintiff/respondent with respect to shop in question was admitted, as it was stated that the respondent was a tenant in the shop in dispute. The application for amendment of the plaint under Order VI Rule 17 read with Section 151 CPC was stated to have been filed at the time when the plaintiff evidence was in progress and the said fact has not been disputed in para No.1 of the reply (Annexure P-4), on merits, filed by the petitioner to the said application. It was pleaded in para 3 of the said application that during the pendency of the case, a week before filing the said application, the defendant had refused to allow the plaintiff from raising a wall over the roof of the shop and accordingly, the amendment was sought for adding an additional relief, the cause of action of which, as per the case of the respondent accrued during the pendency of the case. The trial Court in the impugned order had also observed that the cause of action to seek the additional relief had accrued during the pendency of the suit. In a *lis* between the plaintiff and the defendant, it is open to the plaintiff to claim all the reliefs, more so, when as per the case of the plaintiff, the cause of action to seek an additional relief has accrued during the pendency of the suit. The same would help in adjudicating all the disputes between the

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parties.

8. Primary challenge to the amendment has been made by the petitioner by raising pleas on the merits of the additional prayer made and by highlighting the fact that the said prayer is not liable to be allowed. As has been observed by the Hon'ble Supreme Court in the above-said judgment, the merits of the amendment is not to be adjudged at the stage of allowing the application for amendment. Merely allowing the plaintiff/respondent to make an additional prayer does not amount to allowing the said prayer and the said aspect is to be considered at the time of final adjudication of the case. Further, an opportunity has been granted to the petitioner/defendant to file an amended written statement, and moreover, the delay, if any, caused on account of the said amendment, would primarily harm the plaintiff, as it is the suit of the plaintiff for mandatory injunction which would stand delayed.

9. In view of the above-said facts and circumstances, the impugned order allowing the amendment deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

September 09, 2024*naresh.k***(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?

Yes

Whether reportable?

Yes