



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3309-2024 (O&M)
Decided on: 23.08.2024

NEETA AHUJA AND OTHERS

...Petitioners

Versus

STATE BANK OF INDIA AND ANOTHER

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Vijay Rana, Advocate
for the petitioners.

Mr. Chandeeep Singh, Advocate
for respondent No.1.

RITU TAGORE, J.

1. This revision petition is directed against the order dated 08.01.2024 (Annexure P-7), passed by learned Civil Judge (Junior Division), Jalandhar in CS No.4374 of 2018 titled ‘Neeta Ahuja and others Vs. State Bank of India and another’, whereby an application filed by the petitioner under Order VI Rule 17 of Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), has been dismissed.
2. It is relevant to summarize a few material facts, before delving into the merits of this revision petition. The following facts have been gleaned from the judgment (Annexure P-3) titled ‘Jyoti Vs. Jarnail Singh and others’.



3. One Jarnail Singh son of Mohan Singh, was the original owner of the suit property bearing No.115-B Doordarshan Enclave, village Kingra Tehsil Jalandhar. One Inderjit Singh, filed a suit for specific performance, against said Jarnail Singh, based on agreement to sell dated 25.10.2000 and 15.12.2000. The said suit was decreed in favor of Inderjit Singh vide judgment dated 04.04.2007 and Court granted the relief of possession and permanent injunction, in favour of Inderjit Singh. Said Inderjit Singh filed execution of judgment and decree against Jarnail Singh. Jarnail Singh executed a registered sale deed in favour of his wife Balwinder Kaur, who mortgaged the suit property with State Bank of India (respondent No.1) against loan, and defaulted in its repayment.

4. Respondent No.1-Bank sold the suit property in public auction, on 13.02.2008 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, to recover loan. The property was purchased by Neeta Ahuja (petitioner No.1) and late Smt. Balwant Kaur, now represented by petitioners No.2 to 4, in open auction conducted by the respondent No.1-Bank and respondent No.2, funded the auction money and other miscellaneous expenses for petitioners and respondent No.2 was put in possession of the suit property, under the agreement dated 25.04.2008 executed between petitioner No. 1 and Balwant Kaur, for consideration of Rs.9,01,000/-.

5. Meanwhile, in the execution proceedings, initiated by Inderjit, against respondent No.2, Jyoti, she was dispossessed from the suit property on 10.07.2012, after having lost, her objection petition, filed in execution proceedings on 22.04.2011 and the appeal on 25.11.2011.



6. After that, Jyoti filed a suit for recovery titled 'Jyoti Vs. Jarnail Singh and others' on 10.07.2015 against Jarnail Singh, Balwant Kaur wife of Jarnail Singh, present petitioners and SBI. The said suit was contested by present petitioners and SBI. The said suit was decreed on 05.04.2023 (Annexure P-3) and learned trial Court granted the relief, which reads as under:-

“In view of above referred findings on the issues, the suit of the plaintiff stands decreed against defendants No.3 to 6 to the effect that plaintiff is entitled to recover the sale consideration which he paid under agreement to sell Ex.P-11 to auction purchasers alongwith interest @ 9% per annum from the date of her dispossession till actual realization. The liability of defendant No.3 and defendants No.4 to 6 would be equal (one half each) and defendants No.4 to 6 would be liable to extent to which they inherited the estate of deceased Balwant Kaur. It is further clarified that defendants No.3 to 6 are entitled to be indemnified by the defendant No.7 and they may seek their right by resorting to appropriate remedy. Decree be prepared accordingly.”

7. It is pertinent to mention that present petitioners also filed a suit for mandatory injunction (Annexure P-1) on 31.05.2018 against State Bank of India, Jalandhar and Jyoti w/o Vikas Mohan, with prayer as under:-

“It is, therefore, respectfully prayed that the suit of the plaintiff for mandatory injunction directing the defendant No.1 to refund the amount of Rs.9,78,070/- (which includes Rs.09,01,000/- as Principal Amount plus Rs.63,070/- as Stamp Duty plus Rs.9,000/- as Registration Charges and Rs.5,000/- a Misc. expenses total amounting to Rs.9,78,070/-) paid to the defendant No.1 by the plaintiff No.1 and late Smt. Balwant Kaur widow of S. Gurbaksh Singh (since deceased) either to the plaintiffs or to the defendant No.2 with regard to the sale of house bearing No.115-B, Doordarshan Enclave, village Kingra, Tehsil and Jalandhar, may kindly be decreed in favour of the plaintiffs and against the defendant No.1 with costs, in the interest of justice, equity and good conscious.



It is further prayed that any other relief, which this Hon'ble Court may deem fit and proper may also be granted in favour of the plaintiff and against the defendant No.2, in the interest of justice and equity."

8. As noticed above, during the pendency of the suit (Annexure P-1), filed by the petitioners the suit (Annexure P-3) filed by Jyoti was decreed. The present petitioners (plaintiffs in the suit, Annexure P-1) thereafter filed an application (Annexure P-4) for amendment of the plaint (Annexure P-1), pleading that vide judgment and decree dated 05.04.2023 passed in Civil Suit No.1567 of 2015, while making SBI primarily liable for payment of decretal amount, the Court also granted liberty to the petitioners to claim the amount from the respondent No. 1-Bank along with 9% interest. This subsequent event led the petitioners to seek amendment in the plaint. On these averments, the petitioners sought amendment of plaint, as detailed therein. The respondent No.1-Bank opposed the amendment, while filing the reply (Annexure P-5).

9. The learned trial Court, vide order dated 08.01.2024 (Annexure P-7) dismissed the application for amendment of the plaint, while observing in the concluding paras No.6 and 7, as under:-

"6. From the perusal of the plaint and after hearing the arguments of Ld. counsel for the plaintiff and defendants, this court is of the considered view that the plaintiffs have sought the amendment to add the fact with regard to passing of a judgment and decree by court of Sh. Parinder Singh, Ld. CJSD, Jalandhar in the suit bearing no. 1567 of 2015 dated 05.04.2023 as per which it has been held that the plaintiffs are entitled to indemnification of the said amount from the Defendant no. 1 by resorting to appropriate remedy. Thus, the plaintiffs contend to add that cause of action has also arisen in favour of the plaintiff upon the passing of the said Judgment and decree. The amendment of inclusion of facts showing arousal of cause of action in favour of the plaintiff cannot be allowed to be added at a belated stage after the suit has already been filed. The passing



of judgment and decree granting any right to the plaintiffs, if any, cannot be allowed to form a cause of action in favour of the plaintiff during the pendency of the suit as the amendment shall relate back to the date when the suit was filed. Further, the inclusion of addition of interest along with recovery seems to be an afterthought, when the suit has been pending for almost 6 years. It is pertinent to mention here that it is upon the plaintiff/applicant to prove the due diligence for filing an application for amendment. Hence, this court is of the considered view that allowing of the present amendment would change the arousal of the date of cause of action, which to the prejudice of defendants, cannot be allowed.

7. Accordingly, in view of the above discussion, the present application filed by plaintiff under Order VI Rule 17 for amendment of plaint is hereby dismissed, being devoid of merits.”

10. Learned counsel for the petitioners submits that learned trial Court erred in rejecting the application for amendment of plaint against the settled position of law laid down by Hon’ble the Apex Court and various High Courts, which provide that all amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if it does not change the basic nature of the suit. While referring to the plaint (Annexure P-1) and order passed on the application under Section 151 CPC read with order VII Rule 11(B) CPC, moved by respondent No.1, learned counsel contends that learned trial Court vide order dated 13.09.2023 (Annexure P-2) while allowing the application observed that suit as framed is a money/recovery suit and falls under Clause (i) of Section 7 of the Court Fees Act, 1870 and directed the petitioners to affix appropriate Court fee. The petitioners paid the relevant Court fee. Learned counsel for the petitioners submits that in these circumstances, the observation of the learned trial Court that it would relate back to the suit and would change the course of action is purely conjectural in nature.



11. Learned counsel submits that vide judgment and decree dated 05.04.2023, the petitioners were held entitled to be indemnified by the bank and thereafter they sought the amendment in question, seeking to incorporate the relief. Therefore, observation of the learned trial Court that such amendment is at the belated stage is untenable. Further, from the *zimini* order dated 23.11.2023 (Annexure P-6) and order dated 08.01.2024 (Annexure P-7), it is explicit by that time issues had not been framed. They were framed on 05.03.2024 (Annexure P-8). So the observation of the Court that amendment application of plaint was moved at belated stage and petitioners were not diligent, is contrary to the record.

12. Learned counsel submits that amendment would avoid further litigation and enable the Court to decide the *lis* between the parties completely and effectively. A prayer is thus made to allow the petition and application for amendment of the plaint

13. Contrarily, learned counsel for respondent No.1-Bank, supported the order, stating that same has been rightly passed considering the facts of the case. It is stated that by way of amendment, the petitioners want to change the nature of the suit, and its cause of action. Further, the proposed amendment is time barred, such an amendment is impermissible in the eyes of law. A prayer is made for dismissal of petition.

14. I have heard learned counsel for the parties and have gone through the case file very carefully.

15. The material facts as noticed above are not in dispute. Before advertng to the rival contentions canvassed on either side, it is desirable to



consider the provisions of Order 6 Rule 17 CPC and the judicial precedents governing the amendment of pleading.

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

16. In **Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012(4) R.C.R.(Civil) 481**, it is held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case.

17. It is a well-settled position of law that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. The Court should be liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing an amendment shall really subserve the ultimate cause of justice and avoid further litigation. A change in



the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

18. In a recent judgment of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2022 SCC OnLine SC 1128**, Hon'ble the Supreme Court, has laid down certain principles governing the amendment of pleadings which are reproduced herein below:-

“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 negated.

(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.”*

19. Applying the principles as culled out in **Life Insurance** (*supra*) to the facts of the present case, to the considered opinion of this Court, the impugned order does not withstand judicial scrutiny for reasons that petitioners, in their suit for mandatory injunction (Annexure P-1) had already laid the foundational facts for the recovery of Rs.9,78,070/- from the



respondent No.1, either to them or to defendant No.2, by raising several pleas, by framing the relief of recovery, in the form of refund. Further, in order dated 12.10.2023 (Annexure P-2), learned trial Court, while allowing the application under Order 7 Rule 11 (B) CPC, observed that suit is essentially for recovery and directed the petitioners/plaintiffs to file *ad valorem* Court fee on the amount, claimed.

20. Evidently, Suit No.1567 of 2015 titled 'Jyoti Vs. Jarnail Singh and Ors.' was decided on 05.04.2023 whereby gave rights to petitioners to seek appropriate remedy against Bank, while observing that petitioners are entitled to be indemnified by the Bank. In these circumstances, petitioners got additional cause of action in their favour against the bank. The observation of the learned trial Court that amendment would relate back to date of filing of plaint and would change cause of action, would be a question to be determined on the final decision on the merits of the case. It is not a case where a new case has been set up. Here, the amendment has been sought with respect to the relief already set up in the plaint. In such circumstances, amendment is generally required to be allowed, so that multiplicity of litigation be avoided, and all the related pleas are adjudicated completely and effectually.

21. From the material on record, it is evident that application for amendment was filed before the casting of the issues, this *prima facie* suggests due diligence on the part of the petitioners. Moreover, the respondent No.1-Bank would get a chance to meet the case set up by amendment by filing the amended written statement and take all pleas as



necessary to oppose the pleading, as such, would not prejudice the respondent No.1-Bank.

22. As a sequel to the above said discussion, the impugned order is set aside, the petitioner’s application for amendment of plaint, stands allowed. The learned trial Court shall provide one effective opportunity to the petitioners to file the amended plaint.

23. Revision petition stands allowed accordingly.

24. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

23.08.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No