



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR-3694-2024 (O&M)
Decided on: 09.09.2024**

SURINDER SINGH

...Petitioner

Versus

**M/S KISHAN CHAND RAJESH KUMAR,
COMMISSION AGENT**

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Sukhbir Singh Tiwana, Advocate
for the petitioner.

RITU TAGORE, J.

1. Challenge in this revision petition is to the order dated 21.05.2024 (Annexure P-5) vide which application dated 29.01.2024 (Annexure P-3), filed by petitioner-plaintiff under Order 6 Rule 17 Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for amendment of plaint has been dismissed.

2. Learned counsel for the petitioner submits that petitioner filed a suit (Annexure P-1) against the respondent-defendant for recovery of Rs.4,11,007.37/- along with interest @ 18% per annum. Respondent/defendant upon appearance, filed its written statement (Annexure P-2).



3. Learned counsel states that respondent-defendant firm was arrayed as proprietorship firm, whereas it is a partnership firm, therefore, petitioner-plaintiff moved an application for amendment of the plaint (Annexure P-3), seeking necessary addition and deletion in the plaint. The respondent-defendant firm resisted the application by filing reply (Annexure P-4). The learned trial Court dismissed the application in a mechanical manner, vide order dated 21.05.2024 (Annexure P-5).

4. Learned counsel submits that the learned trial Court, took a very rigid view of the provisions of Order 6 Rule 17 CPC, contrary to the settled position of law which provides that Court should allow all the amendments of the pleadings which are necessary for the adjudication of matter effectively. In this regard learned counsel referred to judgment of Hon'ble the Supreme Court of India **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others, 2015 (5) R.C.R.(Civil) 562** and co-ordinate Bench of this Court in **Diwan Singh Khaira Vs. Sarwan Singh, 2020 (1) PLR 98.**

5. I have heard learned counsel for the petitioner and have gone through the paper book with his valuable assistance.

6. Keeping in view the limited prayer made in this revision petition, I am of the considered view that issuing notice to respondent firm at this stage would, only further delay the proceedings before the learned trial Court and keeping in view the order that is being passed, notice to the respondent is dispensed with at this stage.

7. It is a matter of record that petitioner-Surinder Singh filed a suit



for recovery against M/s Kishan Chand Rajesh Kumar (Annexure P-1). The respondent-defendant firm in para No.6 of its written statement (Annexure P-2) took objection that the respondent-defendant is a partnership firm and all the partners were not arrayed as party. The learned trial Court dismissed the application observing that the petitioner-plaintiff filed the application, belatedly with no plea to demonstrate that he exercised due diligence, and further observed that petitioner cannot be allowed to fill up the lacuna.

8. It is well established principle of law that amendment in the pleadings is to be construed liberally so as to consider the real controversy between the parties and to pronounce the decision more satisfactorily. The object of the amendment is that the Court must try the merit of the case and allow all *bona fide* amendments which are necessary for just decision of the case.

9. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) R.C.R. (Civil) 481**, the Hon'ble Apex Court has held that the power to allow amendment is wide enough to be exercised at any stage in the interest of justice. The purpose is to minimize the litigation.

10. Coming to facts of the case, although objection qua maintainability of suit was taken by the respondent firm, and petitioner did not promptly file an application for impleadment of the proper party, however, party cannot be refused just relief merely because of some mistake, negligence, inadvertent or even infraction in rules of procedure as per law laid down in **Mahila Ramkali Devi and others (supra)**.

11. Rules of procedure are intended to be handmaid to the



administration of justice. In present case, the description of the respondent is required to be clarified by the petitioner. This Court does not think that this will prejudice the respondent-defendant.

12. Further 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 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 mala fide, 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.”

13. 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 the reasons detailed above. Furthermore, the counsel on behalf of the petitioner, undertakes to file the amended plaint. Keeping that in view, it is also an established practice of law that the delay can always be rectified by imposing costs.



14. Accordingly, impugned order dated 21.05.2024 (Annexure P-5) is hereby set aside, subject to payment of Rs.15,000/- as costs, payable by the petitioner to respondent-defendant firm on the due date of hearing as fixed by the learned trial Court or within 15 days thereafter.
15. It is made clear that in case of default, this order shall automatically be vacated.
16. Respondent if not satisfied with this order, may move an application for recalling of this order within 30 days.
17. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

09.09.2024
Rimpal

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