



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(113)

1. CR-5150-2023 (O&M)

Major Gurcharan Singh Ahluwalia (retd.) through his LRs
....Petitioners

Versus

Manjit Singh and others
.....Respondents

2. CR-5237-2023 (O&M)

Major Gurcharan Singh Ahluwalia (retd.) through his LRs
....Petitioners

Versus

Manjit Singh and others
.....Respondents

Date of Decision: - 09.09.2024

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vaibhav Narang, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This order will dispose of two revision petitions, i.e., Civil Revision No.5150 of 2023 and Civil Revision No.5237 of 2023. Both the said revision petitions have been filed challenging the orders arising from the same suit and both petitions have been filed by defendant No.1-Major Gurcharan Singh Ahluwalia.

2. Challenge in Civil Revision No.5150 of 2023 is to the order

dated 22.05.2023 (Annexure P-6) passed by the Civil Judge, Senior Division, Ludhiana whereby an application filed by plaintiff No.1/respondent No.1 under Order 1 Rule 10 CPC for impleading respondents No.8 to 16 herein has been allowed.

3. Challenge in Civil Revision No.5237 of 2023 is to the order dated 22.05.2023 (Annexure P-6) passed by the Civil Judge, Senior Division, Ludhiana whereby the application under Order 6 Rule 17 CPC filed by plaintiff No.1/respondent No.1 seeking amendment of plaint has been allowed.

4. Reference to the documents is from Civil Revision No.5150 of 2023, except where specifically mentioned otherwise.

5. Brief facts of the case are that respondents No.1 to 3/plaintiffs (hereinafter referred to as 'the plaintiffs') had filed a suit in the year 2019 with the following prayers: -

“It is, therefore, respectfully prayed that-

a) A decree for the grant of permanent injunction restraining the defendants-

- i) From making any obstruction to the entry of the plaintiffs to the School premises i.e. Sri Guru Hargobind Public School, Thakkarwal, Pakhowal Road, Ludhiana;*
- ii) From making any obstruction in taking part by plaintiffs in the management and other affairs of the School Sri Guru Hargobind Public School, Thakkarwal, Pakhowal Road, Ludhiana being run by Sri Guru Hargobind Educational Society;*
- iii) From making any obstruction in holding general body meeting of Sri Guru Hargobind Educational Society and further to take suitable steps for smooth running of the School and Society by the plaintiffs;*

- iv) *From making any obstruction in participating the plaintiffs in the meetings of Sri Guru Hargobind Educational Society;*
- v) *From operating bank accounts in the name of Sri Guru Hargobind Educational Society bearing No.32607386578 in State Bank of India, Pakhowal Road, Village Phullanwal, Tehsil and District Ludhiana, account No. C/A 7862002100000439 in Punjab National Bank, Pakhowal Road, Village Daad Tehsil and District Ludhiana, and Saving account No. 78620001000013217 in Punjab National Bank, Pakhowal Road, Village Daad, Tehsil and District Ludhiana by the defendants exclusively without joining the plaintiff No. 1 in operating the same;*
- vi) *From committing any act of waste and damage to the property of Sri Guru Hargobind educational Society as well as Sri Guru Hargobind Public School, Village Thakkarwal, Tehsil and District Ludhiana and further from using any assets as well name of the Society/School by the defendants for their exclusive use;*
- vii) *Defendant No.4 from allowing defendant No.1 and other defendants from operating the Bank account No. 32607386578 exclusively without joining plaintiff No. 1 in operating the same:*
- viii) *Defendant No.5 from allowing defendant No.1 and other defendants from operating of Bank account No. C/A 7862002100000439 in Punjab National Bank, Pakhowal Road, Village Daad Tehsil and District Ludhiana, and saving account No. 78620001000013217 in Punjab National Bank, Pakhowal Road, Village Daad, Tehsil and District Ludhiana exclusively without joining plaintiff No.1 in operating the same;*

And

Decree for Mandatory Injunction directing the defendants to handover all the account books, minute books and other record of Sri Guru Hargobind Educational Society as well as Sri Guru Hargobind Public School, Village Thakkarwal, Pakhowal Road, Ludhiana to the plaintiffs,

May please be passed in favour of the plaintiff and against the defendant with all costs of the suit.

b) Any other relief to which this Hon'ble Court deems fit the plaintiffs are entitled to in law and equity, may also be granted in favour of the plaintiff.”

6. Learned counsel for the petitioner has informed the Court that the above-said suit was filed on 09.07.2019.

7. In the plaint, the plaintiffs had averred that the Sri Harbobind Educational Society was a registered body registered with the Registrar of Firms and Societies and that one of the aims of the said society was to establish and run a Public School known as Sri Guru Hargobind Public School at village Thakkarwal. It was averred in para 2 of the plaint that plaintiff No.1 had made a major contribution to the society as well as to the school and that plaintiff No.1 was the Chairman, plaintiff No.2 was the Vice President and plaintiff No.3 was the General Secretary of the society. It was also averred in the plaint that all the operations of the school ran smoothly until January, 2019 but thereafter the defendants started causing trouble in the smooth running of the society and that of the school and they interfered unnecessarily in the same and even illegally took possession of the minutes book and account books etc. of the society and in spite of best effort of the plaintiffs the original minutes book, accounts books etc. were not provided to them. It was averred that the plaintiffs had even requested the defendants to hold a meeting of the society as per the rules of the society, but the defendants failed to do the same and also did not allow the plaintiffs to hold any meetings of the society. In para 8 of the plaint, it was averred that the Bank accounts in

two Banks were to be operated by two members, one of whom was plaintiff No.1 and the same could not be operated by a single person, however, defendant No.1/petitioner started operating the accounts himself alone without consulting, discussing and involving the plaintiff No.1 and that others defendants also joined hands in the misdeeds of defendant No.1 and the same cast a doubt about the integrity of defendant No.1. It was further averred that the defendants had now taken complete control over the affairs of the school on their own. In para 12 of the plaint, it was averred that as per the rules and regulations, no blood relation member could be there in the committee and that the blood relation member already in the committee were required to be removed but the defendants No.1, 2 and 3 did not agree to the same which led to a conflict between the plaintiffs and the defendants. In para No.13 of the plaint, it was specifically averred that the plaintiffs had received some registered letters in which some waste papers were enclosed and when the plaintiffs confronted the defendants about the same, they did not disclose anything to the plaintiffs. It was reiterated in para No.14 of the plaint that the defendants had illegally taken possession of the accounts books, minute books and all the other related records of the society and the school.

8. A written statement was filed by defendant No.1/petitioner and defendant No.2 and the same has been annexed as Annexure P-2 and in the said written statement, the plea was taken that on 28.12.2019 and 20.01.2019 meetings were held and the members of the society unanimously decided to dismiss the plaintiffs. Other pleas were also taken in the written statement.

9. Two applications were filed by the plaintiffs. One application being an application dated 19.11.2019 under Order 6 Rule 17 CPC for amendment of the plaint and another application also dated 19.11.2019 being an application under Order 1 Rule 10 CPC for impleading certain defendants. It is not in dispute that on the date when the said applications were filed, the issues were not framed and the trial had not commenced. In the application under Order 1 Rule 10 CPC, it was averred that the plaintiffs had learnt that in the meeting held on 20.01.2019, they had been dismissed from the society and further they had learnt that Sri Guru Hargobind Educational Society through petitioner/defendant No.1 had filed a suit for the grant of permanent injunction and in the said suit, a copy of resolution dated 08.08.2019 had been filed, in which, name of certain persons had been mentioned as members and the said persons were sought to be impleaded as parties as the said persons were necessary and proper parties for the final adjudication of the case. It was also averred that another application under Order 6 Rule 17 CPC was also being filed alongside. In the application under Order 6 Rule 17, which has been annexed as Annexure P-4 along with Civil Revision No.5237 of 2023, it was averred that the plaintiffs had learned that vide various resolutions, the plaintiffs had been dismissed, thus, they wanted to amend the plaint to challenge the said resolutions. In addition to the same, para 13-A was also sought to be incorporated to give details as to why the said resolutions deserve to be set aside. Further, at the end of para No.15 of the plaint, certain lines were also sought to be added to state that the newly added defendants No.7 to 14 had no right to pose themselves as

members of the society or to act as members or to participate in the affairs of the society. It was specifically stated in the application that the case was at preliminary stage. Replies were filed by the petitioner to both the said applications.

10. Learned trial Court vide order dated 22.05.2023 (Annexure P-6, annexed along with Civil Revision No.5237 of 2023) had allowed the application under Order 6 Rule 17 CPC of the plaintiffs. The trial Court, in the said order, observed that the present suit was at its initial stage and even issues were not framed and that the amendment sought by the plaintiffs was necessary to adjudicate the dispute between the parties and in order to avoid multiplicity of proceedings. It was observed that in case the plaintiffs are not permitted to challenge their dismissal from the society, then, the very purpose of filing the present suit would be frustrated and filing of a separate suit would lead to multiplicity of litigation. It was further observed that by virtue of the amendment application even challenge to the memberships of other persons who as per their case, had joined as members of the society against the bye-laws of the society, was also sought. The application under Order 1 Rule 10 CPC was also allowed vide order dated 22.05.2023 (Annexure P-7, annexed along with Civil Revision No.5237 of 2023) and in the said order, it was specifically observed that it was the case of the plaintiffs that the persons who were sought to be impleaded were illegally appointed by the society and some of them were also members of the meeting in which the resolution was passed to dismiss the plaintiffs from the society and thus, they were necessary parties required to be impleaded, in order to

avoid the multiplicity of litigation. It is the said two orders which have been challenged by the petitioner before this Court.

11. A perusal of both the paper-books would show that the matter had been adjourned on more than six occasions at the request of the learned counsel for the petitioner.

12. Learned counsel for the petitioner has raised three points to challenge the impugned orders. The first argument raised is that the amendment should not have been allowed as the same would result in withdrawal of an admission. In respect to this argument, learned counsel for the petitioner has referred to para 6 of the plaint to highlight the fact that it had been stated that the school was running properly up till January, 2019 and it was only thereafter that the defendants had started troubling the plaintiffs but in the amendment sought by the plaintiffs, the averments which have been made would show that allegations have been made by the plaintiffs against the defendants with respect to their wrongdoing even prior to January, 2019 and thus, by virtue of making the said amendments, the admission made in para 6 of the plaint is sought to be withdrawn. It is submitted that the same is not permissible in law. Thus, the order allowing the amendment deserves to be set aside on the said ground alone. The second argument raised by the learned counsel for the petitioner challenging the order by which the amendment has been allowed is that a perusal of Annexure P-9 (annexed along with CR-5237-2023), which is a list of documents, would show that the copy of the resolution dated 15.06.2017 has been mentioned in the said list of documents and it is the said resolution which has been challenged by

virtue of the amendment sought. On the basis of the same, it has been submitted that the plaintiffs were in knowledge of the said resolution and the same should have been challenged along with the original plaint and thus, they cannot be permitted to challenge it subsequently. The third argument raised by the learned counsel for the petitioner against the order allowing the amendment is that in the list of documents (Annexure P-9, annexed along with Civil Revision No.5237 of 2023), the copy of the letter dated 08.03.2019 written to SBI, Pakhowal Road is also a part of the said list of documents. Further reference has been made to the letter dated 15.05.2019 (Annexure P-10, annexed along with Civil Revision No.5237 of 2023) vide which the Punjab National Bank had informed the plaintiff No.1 that he is not in the list of the governing body. It is argued that the said documents were in possession of the plaintiffs at the time of filing the plaint and thus, should have made the necessary averments/challenge in the original plaint itself. It is submitted that on the basis of the same, the impugned order deserves to be set aside and the present revision petitions deserve to be allowed.

13. This Court has heard learned counsel for the petitioner and has perused the paper-books.

14. It is not in dispute that on the date when the applications for amendment and for impleading the parties were filed by the plaintiffs and also on the date when the impugned orders were passed, the issues were not framed and the trial had not commenced. From the pleadings of the parties, it is apparent that the primary grievance of the plaintiffs in the suit was that they were also members of the society, inasmuch as, in para 3 of

the plaint, it had been stated that plaintiff No.1 was the Chairman, plaintiff No.2 was the Vice President and plaintiff No.3 was the General Secretary of the society. It was further averred in the plaint that the defendants had completely taken over the society as well as over the functioning of the school and had also taken over the accounts book, minutes books, etc. From the amendment sought by the plaintiffs, it is apparent that there were certain resolutions which had been passed by virtue of which the present plaintiffs had been dismissed and certain other members had been appointed as members. It would be a matter of trial to ascertain whether the plaintiffs had been illegally dismissed and the persons who had been as appointed members were legally appointed and thus, the amendment sought is very necessary for the proper and final adjudication of the case and also for avoiding multiplicity of litigation. The trial Court has rightly observed that the present suit for permanent injunction would stand frustrated in case, the resolutions are not challenged. Moreover, filing of a separate suit would result in unnecessary multiplicity of litigation. Thus, this Court is of the view that the amendment sought is necessary for proper and final adjudication of the case.

15. 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 the amendments that may be necessary for determining the real question in controversy between the parties should be 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.

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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.

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

16. The arguments raised by learned counsel for the petitioner

challenging the impugned orders are meritless and deserve to be rejected.

17. With respect to the argument raised to the effect that a perusal of the list of documents (Annexure P-9, annexed along with Civil Revision No.5237 of 2023) would show that a reference was made to the copy of the resolution dated 15.06.2017 as well as to the copy of the letter dated 08.03.2019 to SBI, Pakhowal Road and since as per the case of the petitioner the said list was annexed along with the original plaint, thus, the challenge to the resolution dated 15.06.2017 should have been made along with the original suit. In this regard, it is observed that a perusal of the said document (Annexure P-9), annexed along with CR-5237-2023) would show that the same is a relevant extract of a document. The photocopy of the said document (Annexure P-9) has been annexed at running page No.117 of Civil Revision No.5237 of 2023 and the said document is stated to be continuing on a second page, however, the second page has not been annexed along with the present paper-book. There is no date mentioned on the said document (Annexure P-9) and even a complete copy of the said document (Annexure P-9) has not been annexed. Learned counsel for the petitioner could neither show that the said document had been signed by the plaintiffs nor could authentically show that the said document was annexed along with the plaint. In fact, several documents to which reference has been made in the said list (Annexure P-9) have not been referred to in the plaint and thus, this Court is not fully satisfied as to whether the said list of documents (Annexure P-9) was submitted by the plaintiffs or not, as to what is the date of the said document, and whether the same was annexed alongwith the plaint or not.

Moreover, even assuming for the sake of arguments that the said list of documents was submitted by the plaintiffs along with the plaint and the resolution dated 15.06.2017 was annexed with the plaint, yet, since the trial has not commenced and the issues have not been framed, thus, there is no bar to the plaintiffs to move an application for amendment for challenging the resolutions by which the plaintiffs were dismissed, including the resolution dated 15.06.2017. It is a matter of settled law that the Court has to be liberal in allowing the amendment, in case, the same has been filed prior to the commencement of the trial, in order to avoid multiplicity of litigation, moreso, when the same is necessary to finally adjudicate the case. At any rate, by virtue of the amendment, several other resolutions including those dated 20.01.2019 and 10.01.2019 were also sought to be challenged, regarding which it cannot be said that the same were in the knowledge of the plaintiffs prior to the filing of the written statement by the present petitioner and defendant No.2. Further reliance placed upon the letter dated 15.05.2019 (Annexure P-10, annexed along with CR-5237-2023) is completely misplaced. A perusal of the list of documents (Annexure P-9, annexed alongwith CR-5237-2023) would show that there was no reference to the letter dated 15.05.2019 in the said list of documents and thus, for the reasons mentioned herein above with respect to the resolution dated 15.06.2017 and also on account of the additional fact of the said letter not being referred to in the list (Annexure P-9), no reliance could be placed upon the document dated 15.05.2019 so as to impute prior knowledge to the plaintiff. Moreover, a perusal of the document dated 15.05.2019 does not show that any resolution, much less,

resolutions dated 10.01.2019 and 20.01.2019 were supplied to the plaintiffs. In the said document, it was only mentioned that the plaintiff's name was not in the list of the governing body.

18. A perusal of the original plaint would show that the averments were made by the plaintiffs to the effect that the defendants were not permitting the plaintiffs from participating in the management of the society and the school and thus, the amendment sought by the plaintiffs is in consonance with the pleadings of the plaintiffs even in the original suit.

19. The third argument raised by the learned counsel for the petitioner to the effect that there is a withdrawal of an admission, is completely misconceived. As has been detailed hereinabove, a reading of the entire plaint clearly shows that although the plaintiffs were earlier occupying important positions in the society being the Chairman, Vice President and the General Secretary yet the defendants, including the present petitioner, had restrained the plaintiffs from holding meetings and also from participating in the same and had also taken the original minutes book and other documents. The averments made in the application for amendment is in consonance with the pleas raised by the plaintiffs in the original suit. Moreover, this Court has considered the averments made in the application under Order 6 Rule 17 CPC and is not convinced with the arguments raised by learned counsel for the petitioner that any specific admission made by the plaintiffs stands withdrawn by virtue of the averments now sought to be incorporated in the amendment application. Rather, the amendment sought is very necessary for the

proper and final adjudication of the case. Even the impleadment of the persons who were present during the resolution, vide which the plaintiffs were dismissed, and who have been appointed as new members, which as per the case of the plaintiffs is contrary to the bye-laws, are necessary to be impleaded as they are necessary parties and thus, both the impugned orders have been legally passed and the same deserve to be upheld.

20. The petitioner should not shy away from the entire matter being tried and adjudicated, on the basis of complete and detailed pleadings. The petitioner would also have a right to file an amended written statement and the entire dispute between the parties would be finally adjudicated upon.

21. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned orders passed by the trial Court are legal and do not call for any interference and the present civil revision petitions being meritless, deserve to be dismissed and are accordingly dismissed.

September 09, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No