



CR-4679-2024 (O&M)
Date of decision : 21.08.2024

....Petitioner

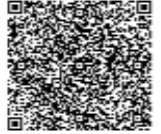
....Respondents

Present : Mr. Akun Sheemar, Advocate
for the petitioner.

The instant revision petition is directed against the order dated 17.07.2024 passed by Civil Judge (Junior Division), Dasuya whereby the application filed by the petitioner under Order VI Rule 17 of CPC stands allowed.

3. During the pendency of the suit after the trial has commenced and the evidence of the plaintiff was in the midst, the present application

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was filed seeking amendment of the plaint. By way of proposed amendment the plaintiff sought amendment in the prayer clause by adding additional relief of damages and corresponding pleadings by way of Para 5(a) in the plaint. Trial Court vide impugned order allowed the same.

4. Counsel for the petitioner while assailing the impugned order submits that as per settled law amendment ought not have been allowed after the trial has already commenced. In support of his contention, he relies upon order passed by Supreme Court in the case of **Pandit Malhari Mahale vs. Monika Pandit Mahale and others**, Civil Appeal No.189 of 2020 [@ Special Leave to Appeal (C) No(s). 5888/2019], *decided on* 10th of January, 2020. He further submits that by incorporating amendment in the prayer clause the nature of suit stands altered.

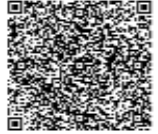
5. I have heard counsel for the petitioner and have carefully gone through records of the case.

6. In order to appreciate the arguments raised by counsel for the petitioner, it will be apt to peruse bare provisions contained under Order VI Rule 17 CPC which reads as under:

“Order VI

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:

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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.”

7. The same has been interpreted and the parameters have been culled out by Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2022 AIR (Supreme Court) 4256** observing 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

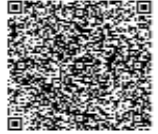
(ii) to avoid multiplicity of proceedings, provided

(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).

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(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.

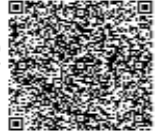
(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(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

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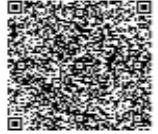
required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission 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)

8. Before referring to the amendment, it will be apt to peruse the contents of the plaint. The material averments has been raised in Para No.5 which reads as under:

“5. The said illegal and hap-hazard manner Construction made by the defendants has weakened the lateral Support of the house of the plaintiff. The photographs showing the construction made by the defendants and the Cracks occurred due to the same in the house of the plaintiff are attached herewith. As per the Compromise Dt. 7-7-2020 the defendant no. 1 admitted her Guilt and Undertook to carry out the necessary repairs of the Cracks of the House of the plaintiff which occurred due to her Fault is attached herewith as Annexue B. In Terms of the Compromise Dt. 7-7-2020 the defendant no. 1 is bound to carry out the repairs of the house of the plaintiff which are shown as Red in the site plan attached herewith as Annexure A. So the plaintiff has sought the relief of the Mandatory Injunction that the defendant no. 1 is bound to carry out the repairs of the house of the plaintiff which are shown as Red in the site plan attached herewith as Annexure A. In Terms of the compromise Dt. 7-7-2020.”

9. The unamended prayer clause reads as under :

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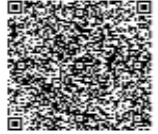


- “A. Decree of Permanent Injunction be passed in favour of Plaintiff and against the Defendants, restraining the Defendants, their agents representatives, attorneys etc. from raising the construction in any manner whatsoever in the area shown as Blue in the site plan attached herewith as Annexure A which causes seepage of water, plumbing of walls to the house of the plaintiff, Causing Damage to the Lateral Support to the House of the Plaintiff shown as Green in the site plan attached herewith as Annexure A situated in village Bains Awan.
- B. A Decree of Mandatory Injunction directing the defendants to carry out the necessary repairs of the house of the plaintiff shown as Green in terms of compromise dated 7-7-2020 attached here with as Annexure B and the cracks are shown as Red in the site plan attached herewith as Annexure-A.
- C. That the costs of the suit be also awarded.
- D. Any other relief to which the Plaintiff is found entitled to be also granted in the interest of justice.”

8. The proposed amendment reads as under :

- “A. That the plaintiff wants to add the following in the end of the head note after words Annexure A of the plaint "AND Suit for Damages of ₹3,50,000/- on account of damages caused by the defendants to the house of the plaintiff shown as Green in the site plan attached herewith as Annexure A".
- B. That the plaintiffs want to add the following para as para no. 5(A) in the plaint.
- 5(A) "That the defendants while raising the illegal and hap-hazard manner Construction in the area shown as Blue in the site plan attached herewith has weakened the lateral

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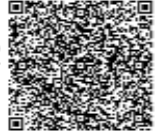


Support of the house of the plaintiff. The photographs showing the construction made by the defendants and the Cracks occurred due to the same in the house of the plaintiff are attached herewith. The Govt. approved valuer surveyor and loss assessor visited the house of the plaintiff and submitted the report assessing the cost of repair for a sum of 3,50,000/-. The copy of technical report and the photographs of the residential house of the plaintiff reflecting the cracks is attached herewith. Even as per the Compromise dated 7-7-2020 the defendant no. 1 admitted her Guilt and Undertook to carry out the necessary repairs of the cracks of the House of the plaintiff which occurred due to her fault is attached herewith as Annexure B and the defendant no. 1 failed to carry out the necessary repairs of the house of the plaintiff. In terms of the compromise dated 7-7-2020 the defendant no. 1 is bound to carry out the 'repairs of the house of the plaintiff which are shown as Red in the site plan attached herewith as Annexure A or otherwise the defendants are liable to pay the damages or the cost of the repair to be carried out by the plaintiff to set right his residential house. So the plaintiff has sought the relief of damages as costs of repair of the house of the plaintiff as the defendant has failed to carry out the repair the house of the plaintiff.

- C. That the plaintiff wants to add the following lines after the words **Annexure A** and before the para C "AND Suit for Damages of ₹3,50,000/- on account of damages caused by the defendants to the house of the plaintiff shown as Green in the site plan attached herewith as Annexure A".

10. Thus, so far as the main thrust of the suit is concerned, the same still remains w.r.t. alleged unauthorized construction being raised by the

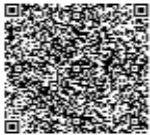
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defendant resulting in the damage to the adjoining house owned by the plaintiff. By way of amendment, the plaintiff has incorporated plea w.r.t. damages suffered in the prayer clause and the corresponding pleadings in the plaint. There can't be any dispute w.r.t. the mandate of the proviso appended to Order VI Rule 17 CPC that restricts the power of the Courts to allow the amendments after trial has commenced. However, the main provision as contained under Order VI Rule 17 CPC mandates allowing the amendment where the Court feels that the same is just and necessary for the adjudication of the matter in hand.

11. In the present case, the plaintiff being aggrieved of construction raised by the defendants and the consequential damages suffered by the building owned by the plaintiff sued the defendants seeking decree of permanent injunction in form of restrain order against the plaintiff from raising further construction. He also sought decree of mandatory injunction in the form of direction to the defendants to carry out necessary repairs in the house of the plaintiff. Once the construction has already been carried out the plaintiff by way of proposed amendment seeks decree of damages to the extent of Rs.3,50,000/-. In sum and substance the issue remains same and there is no change in the nature of the suit. Thus, the proposed amendment being necessary for adjudication of real dispute between the parties, Trial Court has rightly allowed the same as per the mandate of Order VI Rule 17 of Civil Procedure Code, 1908.

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12. In view of above, this Court does not find any reason to interfere in the present revision petition. The same is accordingly dismissed.
13. Pending application, if any, shall also stand disposed off.

August 21, 2024					(Pankaj Jain)
Dpr					Judge
	Whether speaking/reasoned	:		Yes/No	
	Whether reportable	:		Yes/No	