



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

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**CR-4843-2024 (O&M)
Date of Decision : 23.09.2024**

MANDEEP SINGH Petitioner

VERSUS

AMIT KUMAR AND OTHERS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhir Paruthi, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 02.07.2024 (Annexure P-3) passed by the learned Additional Civil Judge (Senior Division), Jalandhar whereby the application filed by the plaintiff-petitioner under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint was dismissed.
2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for specific performance of an agreement to sell dated 04.10.2016 directing defendant-respondent No.1 to execute a sale deed and to deliver possession with regard to a shop measuring approximately 1.5 Marla i.e. 12' x 35' (Marla = 272 Square Feet) situated at Gangsar Bazaar, Kartarpur, District Jalandhar. The suit was filed in the year 2017. During the pendency of the suit, an application was filed under Order 1 Rule 10 CPC for impleading another defendant. The said application was allowed.

Subsequently, an application for amendment of the plaint was filed which was also allowed. The matter remained pending for over three years for the evidence of the plaintiff-petitioner. After the commencement of the evidence of the plaintiff-petitioner, the present application was filed yet again for amendment of the plaint, this time again changing the manner in which the amounts are alleged to have been paid. The application was contested. The Trial Court vide impugned order dated 02.07.2024 dismissed the application. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the amendment ought to have been allowed as the nature of the suit has not been changed. In support of his arguments, learned counsel has relied upon the judgments passed by the Hon'ble Supreme Court in **Usha Balashaheb Swami & Ors. V/s Kiran Appaso Swami & Ors. [2007 (2) RCR (Civil) 830]; Revajeetu Builders & Developers V/s Narayanaswamy & Sons & Ors. [2010 (1) RCR (Civil) 27]** and **Life Insurance Corporation of India V/s Sanjeev Builders Private Limited & Anr. [Civil Appeal No.5909 of 2002 arising out of SLP (C) No.22443 of 2019 decided on 01.09.2022]** and the judgment passed by this Court in **Satnam Singh V/s Kuldip Singh & Ors. [2023 (3) RCR (Civil) 570]**.

4. Heard.

5. In the present case the suit itself was filed in the year 2017. Thereafter an application for impleading another defendant was filed which was allowed. Subsequently, an application was filed for amendment of the pleadings. The said application was also allowed. Thereafter in the year

2023 the present second application was filed wherein further amendments have been sought stating that the manner in which the amounts were paid has inadvertently been mentioned wrongly in the plaint. The Trial Court while dismissing the application has noticed that after seven years the same has been filed with no explanation forthcoming as to why the said facts were not within the knowledge of the plaintiff-petitioner at the time of filing of the suit as well as at the time of filing of the first application for amendment. It has also been noticed that bank statements had been filed along with the plaint and the entire plaint revolves around these payments. It is further noticed that 20 opportunities were availed by the plaintiff-petitioner for leading his evidence. Thereafter, when his evidence had commenced, the present second application for amendment of the plaint was filed and that too after a period of seven years.

6. The judgment relied upon by the learned counsel for the plaintiff-petitioner in the case of **Usha Balashaheb Swami & Ors.** (supra) pertains to amendment of a written statement and hence the same would not be applicable in the present case as in the present case the amendment sought is of the plaint. In the case of **Revajeetu Builders & Developers** (supra) relied upon by the learned counsel, after the institution of the suit, the Urban Land (Ceiling & Regulation) Act, 1976 was repealed and therefore the necessity for filing an application for amendment arose. In the present case, it is to be noticed, that earlier also an application for amendment was filed which was allowed. However, the prayer now made in the present second application was not made in the earlier application. The

present application has now been filed at the time when the matter is fixed for cross-examination of the plaintiff-petitioner's witnesses and there is no reason whatsoever which is forthcoming from the application as to why the amendments now sought were not pleaded in the earlier application. The third judgment in the case of **Satnam Singh** (supra) also relates to amendment of a written statement and hence the same would also not be applicable in the present case. The judgment relied upon by the learned counsel for the plaintiff-petitioner in the case of **Sanjeev Builders Private Limited & Anr.** (supra) would also not come to his aid as there is no quarrel with the proposition of law, however, the said judgment is totally distinguishable on facts.

7. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India V/s Sanjeev Builders Private Limited & Anr.** [2023 (1) RCR (Civil) 851] has held 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 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 pinpointedly 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. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)."

8. In the present case, the case as set up by the plaintiff-petitioner does not fall under any of the parameters laid down by the Hon'ble Supreme Court in the case of **Sanjeev Builders Private Limited & Anr.** (supra). In the present case, despite the account statements having been appended with the plaint, there is no explanation as to why the amendment is now again being sought at the belated stage.

9. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.09.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No