

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

**CR-5988-2023 (O&M)**

**Date of decision : 22.08.2024**

M/S SURINDER COAL SUPPLY

....Petitioner

Versus

M/S KALSI PISTON INDUSTRIES AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

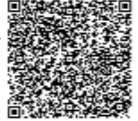
Present :     Mr. Umesh Aggarwal, Advocate for the petitioner.

Mr. Anupam Bhardwaj, Advocate for the respondent.

**PANKAJ JAIN, J. (ORAL)**

By way of present revision petition, the plaintiff has assailed order dated 4<sup>th</sup> of August, 2023 passed by Civil Judge (Junior Division), Amritsar dismissing the application filed by the plaintiff seeking amendment of the plaint.

2.             Plaintiff filed suit seeking recovery of Rs.1,93,299/- along with interest and costs against the defendants claiming that he was supplying coal to the defendants from time to time. Plaint is based upon the account statement of the plaintiff claimed to have been maintained in ordinary course of its business. Defendants resisted the suit denying the claim of the plaintiff. It was admitted by the defendants that the coal was purchased by them from the plaintiff till 31<sup>st</sup> of March, 2013. The issues were framed. Subsequent to the framing of issues, the plaintiff filed the present application



seeking amendment of plaint. Proposed amendments reads as under :

“2. That in the para No.3 of the plaint, the plaintiff/applicant has due to typographical error has mentioned in the first line in the year 2015-16 as 201415 and as such, the plaintiff by way of amendment wants to correct the said typographical error from 201415 to 2015-16.

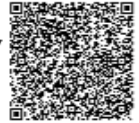
Likewise in the para No.4 of the to typographical error, the plaint, due plaintiff has mentioned the bill number as 52 instead of bill No.50 as the bill is bearing No.50 dated 02.04.2014 and not bill No.52 dated 02.04.2014 and such, the plaintiff by way of amendment wants to correct the said figure from bill No.52 to bill No.50.

Likewise in the para NO.5 of the plaint, the plaintiff has mentioned the amount as Rs.60,000/- whereas the defendant has paid the amount of Rs.70,000/- out of Rs.2,63,299/- and accordingly the suit amount comes to Rs.193299/-. Thus the plaintiff by way of amendment wants to correct typographic/arithmetic error the said from Rs.60,000/- to Rs.70,000/- in the para NO.5 of the plaint.

Likewise in the para No. 8 of the plaint due to typographic error the date of legal notice is mentioned as 05.04.2017 whereas the date is 05.04.2018 and accordingly the plaintiff wants to correct the said date 05.04.2017 in the para No.8 and 9 of the plaint to 05.04.2018 by way of amendment.

3. The amendments were sought on the ground that the same are necessary for the adjudication of the case. The amendments are being sought as remedial measure as some typographical error crept in the plaint which could be discovered only while preparing the plaintiff's evidence.

4. The application was resisted by the defendants claiming that written statement was filed by the plaintiff way back in the year 2019.



Thereafter, replication was filed by the plaintiff on 8<sup>th</sup> of January, 2020. In the plaint, the plaintiff specifically pleaded date of notice as 5<sup>th</sup> of April, 2017 and the correct date as 5<sup>th</sup> of April, 2018 only with an intent to bring the suit within limitation.

5. Trial Court dismissed the application filed by the plaintiff holding that the application seeking amendment of plaint has been filed approximately after three years after the commencement of trial. The plaintiff filed replication affirming the contents of the plaint. The proposed amendments being afterthought cannot be allowed after the commencement of trial as the same shall change nature of the case.

6. Counsel for the petitioner while praying for allowing the revision submits that the Trial Court fell in error in denying the prayer of the plaintiff merely on the ground that the trial has already commenced. He submits that bare perusal of the proposed amendments would reveal that the same relate to typographical errors related to the dates and value/figures. He thus submits that the proposed amendments will not change the nature of the suit in any manner. The basic frame as well as the structure of the suit shall remain intact and thus no prejudice shall be caused to the defendants. It has been further contended that the proposed amendments are necessary for the proper adjudication of the case in hand. Commencement of the trial should not be taken against the plaintiff as the evidence of the plaintiff is yet to commence.

7. Per contra, counsel for the respondents has emphatically



opposed the prayer. He submits that the present application has been filed only to delay the trial. Amendment application was filed after availing numerous opportunities to lead evidence. Mr. Bhardwaj further submits that by incorporating the amendment in the plaint, the plaintiff wants to bring the suit within the period of limitation. Process of law cannot be allowed to be abused by the petitioner.

8. I have heard counsel for the parties and have gone through records of the case.

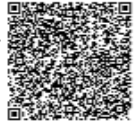
9. In order to appreciate the arguments raised by counsel for the rival parties, it will be apt to peruse bare provisions contained under Order VI Rule 17 CPC which reads as under:

### 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:

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.”

10. 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).

(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,

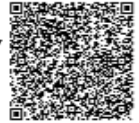
(ii) the amendment changes the nature of the suit,

(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.

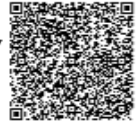
(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(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. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897)

11. In the present case, the amendments sought by the plaintiff in the plaint concisely are as under:

- In para 3 of plaint year 2014-15 has been mentioned instead of



2015-16.

- In para 4 bill No.52 of dated 02.04.2014 has been mentioned instead of bill No.50 dated 2.04.2014.
- In para 5 of the plaint amount of Rs. 60,000/- has been mentioned instead of Rs. 70,000/-
- In para 8 of the plaint date of legal notice is mentioned as 05.04.2017 instead of 5.4.2018.
- In para 9 the date of legal notice dated 05.04.2017 has been mentioned instead of 05.04.2018.

12. Evidently, all the amendments are w.r.t. the dates and figures. So far as substantive pleas raised in the plaint are concerned, no such amendment is proposed. So far as the objection raised by Mr. Bhardwaj and as also held by the Trial Court w.r.t. to bringing the suit within the limitation, it will be apt to peruse Para No.9 of the plaint. The same reads as under:

“9. That the cause of action arose on 1.9.2017 when the defendant made part payment of Rs. 10,000/- and at the time of making the payment, it was assured by the defendant that the balance payment shall be paid after receiving the last notice dated 5.4.2017 but later on the defendant refused to pay the balance amount.”

13. Thus, in order to plead that the suit is within the limitation, the plaintiff relies upon the alleged payment made by the defendants on 1<sup>st</sup> of September, 2017 and notice dated 5<sup>th</sup> of April, 2017. Admittedly, the suit was instituted on 7<sup>th</sup> of July, 2018. Thus, even if the legal notice as mentioned in the plaint dated 5<sup>th</sup> of April, 2017 is taken to be 5<sup>th</sup> of April, 2018, the same would be in consequential so far as the prescribed period of



limitation for filing the suit for recovery is concerned.

14. Keeping in view the aforesaid facts, this Court does not find that the Trial Court should have declined the prayer made by the plaintiff to amend the plaint.

15. As a sequence of the discussion held hereinabove, the application filed by the plaintiff is allowed subject to payment of Rs.5,000/- as costs to be paid to the defendants.

16. Ordered accordingly.

17. Pending application(s), if any, shall also stand disposed off.

August 22, 2024

(Pankaj Jain)  
Judge

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No