

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7688-2023 (O&M)
Decided on: 26.02.2024

VINOD KUMAR SOPHAT
...Petitioners

Versus

GROUP CAPTAIN PARDEEP MARWAHA AND OTHERS
...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Maninder Arora, Advocate
for respondent No.1.

Mr. Gaurav Goel, Advocate and
Mr. Tarlok, Advocate
for respondents No.2 to 4.

RITU TAGORE, J.

1. Mr. Maninder Arora, Advocate appears on behalf of respondent No.1 and files Power of attorney, which is taken on record, subject to just exceptions.
2. Challenge in this revision is to the order dated 01.12.2023 (Annexure P-12) passed by learned Additional Civil Judge (Senior Division), Shahid Bhagat Singh Nagar vide which application under Order 6 Rule 17 CPC (Annexure P-9) filed by respondent No.1-plaintiff has been allowed.

3. Learned counsel for the petitioner while referring to the application for amendment of plaint moved by respondent No.1-plaintiff (Annexure P-9), submits that the application is without material particulars, such as which portion of the original plaint needs amendment, or what specific amendments are required to be added/ substituted/ deleted, and where the amended pleadings are to be added in the original plaint. The learned counsel submits that both the application and proposed amended plaint (Annexure P-10) are vague in nature, a practice which has been disapproved by the Courts. In support to his plea, referred to '**Gurdial Singh and others Vs. Raj Kumar Aneja and others**', (2002) 2 SCC 445. It is stated that learned trial Court while allowing the application (Annexure P-9), failed to appreciate that application and proposed amended plaint were not in accordance with provisions of Order 6 Rule 17(2) Code of Civil Procedure, 1908. Further, despite specific objections raised by the petitioner/defendant in this regard, they were not addressed to by the learned trial Court. The learned counsel further submits that the learned trial Court also failed to note that no prayer for recovery was made by the plaintiff nor was the Court fee calculated or affixed on the relief claimed. Despite this, learned Court allowed the respondent No.1-plaintiff the relief of recovery by amendment of the plaint. It is stated that the proposed amended plaint (Annexure P-10) was beyond the prayer allowed. On the above premise, a prayer is made to set aside the impugned order.

4. On the other hand, learned counsels for respondent No.1-plaintiff was unable to deny that the application for amendment of plaint (Annexure P-9) does not specify the necessary additions or amendments needed, nor does it indicate where these amendments are to be incorporated in the original plaint. The learned counsel also could not deny that the

proposed plaint (Annexure P-10) annexed, is also deficient in the material particulars to be incorporated in the plaint as required under Order 6 Rule 17(2) CPC. Learned counsel, however, submits that respondent No.1-petitioner may be permitted to move an appropriate application, encompassing all the pleas, including the cause of action as set out in the application (Annexure P-9). It is urged that due to the loose drafting of the plaint by the counsel, the party should not be penalized.

5. Contra, learned counsel for the petitioner submits in case permission is given to the respondent-plaintiff to move an appropriate application, in that case, he should be given the liberty to take all the pleas to oppose the application.

6. I have gone through the impugned order (Annexure P-12). It is a matter of record that respondent No.1-plaintiff filed a suit (Annexure P-1) for declaration and permanent and mandatory injunction against the present petitioner and others and during the pendency of the aforesaid suit, respondent No.1-plaintiff moved an application for amendment of the plaint (Annexure P-9), which reads as under:-

“APPLICATION UNDER ORDER VI RULE 17 OF THE CODE OF CIVIL PROCEDURE, ON BEHALF OF THE PLAINTIFF, FOR AMENDMENT OF THE PLAINT

1. That the applicant has preferred the above noted civil suit seeking declaration and permanent and mandatory injunction against the defendants, pending adjudication before this Hon'ble Court and now listed for hearing for 10.01.2023.

2. That pursuant to service of summons, the defendants entered appearance, whereafter the defendant no.1 moved an application under Order 7 Rule 11 of CPC for rejection of the plaint. The applicant submits that considering the averments made in the application as well as the law resting on the subject, this Hon'ble Court was pleased to dismiss the said application vide orders dated 03.01.2022. A copy of the said order should form part of the judicial record.

3. That vide orders dated 18.01.2022, this Hon'ble Court was pleased to partly allow the application under Order 39 Rule 1 & 2 read with Section 151 CPC moved by the applicant and the defendant no.1 was restrained from withdrawing the amount of FDRs and the amount lying in the savings account of Late Sh. Jaswant Rai Marwaha till the final disposal of the suit.

4. That during the course of arguments on the application under Order 39 Rule 1 & 2 read with Section 151 CPC, moved by the applicant, it was submitted on behalf of the defendant no.1 that he has already withdrawn some of the FDRs wherein he had been made a nominee. The applicant submits that admittedly, the defendant no.1 has withdrawn the amounts of said FDRs despite being just a nominee. It is a settled proposition of law that a nominee is just a person who is entrusted with the amounts to be distributed among the legal heirs of the deceased.

5. That since the defendant no.1 despite being merely a nominee in the FDRs of Late Sh. Jaswant Rai Marwaha has encashed the same, thereby denying the applicant of his legitimate claim, the applicant by way of the present application seeks amendment of the plaint for recovering the amounts of the FDRs, illegally encashed/withdrawn by the defendant no.1.

6. That in addition to the above, it is submitted that Late Sh. Jaswant Rai Marwaha and his wife Smt. Neelam Marwaha were the respective owners of a property bearing House No. 46 Pandora Mohalla, Near Railway Road Nawanshahr and a vehicle (Maruti Swift Dezire car) bearing registration no. PB 32 X 7555. It has now come to the knowledge of the applicant that the defendant no. 1, in collusion with his accomplices is attempting to sell/transfer/alienate/dispose of the said assets of Late Sh. Jaswant Rai Marwaha. It is also pertinent to mention here that the defendant no. 1 has falsely claimed in his written statement that Late Sh. Jaswant Rai Marwaha during his lifetime gave his aforementioned house to him. The fact remains that the said house is still in the name of Sh. Jaswant Rai Marwaha and no document regarding transfer of ownership in the name of defendant no. 1 has been placed on record by him. As such, the applicant by way of the present application further seeks a direction to the defendant no. 1 to maintain status quo with regard to property bearing House No.46 Pandora Mohalla, Near Railway Road Nawanshahr and vehicle (Maruti Swift Dezire car) bearing registration no. PB 32 X 7555.

7. That the plaintiff by way of the present application also seeks partition of the aforementioned assets/estate left behind by the deceased i.e. Sh. Jaswant Rai Marwaha, in accordance with law.

8. That in view of the fresh facts submitted hereinabove, the applicant herein prefers the present application for amendment of his plaint. Hence this application.”

7. Along with the application, also annexed the amended plaint (Annexure P-10).

8. The petitioner filed reply (Annexure P-11) and raised preliminary objections *inter alia* that application is highly belated and is legally and factually not maintainable, further same has not been filed as per Punjab and Haryana High Court, Rules and orders.

9. The amended provisions of Order 6 Rule 17(2) CPC as applicable to State of Punjab, Haryana and Union Territory Chandigarh reads as under:-

“(Punjab, Haryana and Chandigarh).-Re-number rule 17 as sub-rule (1) thereof and add the following as sub-rule (2):-

“(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading.”-(1-11-1966)”

10. In **Gurdial Singh (supra)** Hon’ble the Supreme Court Para No.13 and para No.18 observed as under:-

“13. Before parting we feel inclined to make certain observations about the loose practice prevalent in subordinate Courts in entertaining and dealing with applications for amendment of pleadings. It is a disturbing feature and, if such practice continues, it is likely to thwart the course of justice. The application moved by the occupants for amendment in their written statement filed earlier did not specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. What the amendment applicants did was to give in their applications a vague idea of the nature of the intended amendment and then annex a new written statement with the application to be substituted in place of the original written statement. Such a course is strange and unknown to the procedure of amendment of pleadings. A pleading, once filed, is a part of the record of the Court and cannot be touched, modified, substituted, amended or withdrawn except by the leave

of the Court. Order 8 Rule 9 of CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than by way of defence to a set-off or counter-claim except by the leave of the Court and upon such terms as the Court thinks fit. Section 153 CPC entitled "General power to amend" provides that the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Order 6 Rule 17 CPC confers a discretionary jurisdiction on the Court exercisable at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The rule goes on to provide that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Unless and until the Court is told how and in what manner the pleading originally submitted to the Court is proposed to be altered or amended, the Court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation or, may be so devised as to deprive the opposite party of a valuable right accrued to him by lapse of time and so on. It is, therefore, necessary, for an amendment applicant to set out specifically in his application, seeking leave of the Court for amendment in the pleadings, as to what is proposed to be omitted from or altered or substituted in or added to the original pleadings.

18. Thus, once a prayer for amendment is allowed the original pleading should incorporate the changes in a different ink or an amended pleading may be filed wherein with the use of a highlighter or by underlining in red the changes made may be distinctly shown. The amendments will be incorporated in the pleading by the party with the leave of the Court and within the time limited for that purpose or else within fourteen days as provided by Order 6 Rule 18 CPC. The Court or an officer authorised by the Court in this behalf may compare the original and the amended pleading in the light of the contents of the amendment application and the order of the Court permitting the same and certify whether the amended pleading conforms to the order of the Court permitting the amendment. Such practice accords with the provisions of Code of Civil Procedure and also preserves the sanctity of record of the Court. It is also conducive to the ends of justice in as much as by a bare look at the amended pleading the Court would be able to appreciate the shift in stand, if any, between the original pleading and the amended

pleading. These advantages are in addition to convenience and achieving maintenance of discipline by the parties before the Court. Amendments and consequential amendments, allowed by the Court and incorporated in the original pleadings, would enable only one set of pleadings being available on record and that would avoid confusion and delay at the trial. Most of the High Courts in the country follow this practice, if necessary by making provisions in the rules framed by the High Court for governing the subordinate Courts and their Original Side, if there be one. In fact, in the State of Punjab and Haryana and Union Territory of Chandigarh, there is a local amendment whereby the text of Rule 17 in Order 6 of CPC has been renumbered as sub-rule (1) and the following sub-rule (2) added :

"(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading".

The above said rule appears to have been completely over-looked while moving the application for amendment. It is expected that the Courts in Punjab, Haryana and Chandigarh would follow the rule in letter and spirit."

11. Perusal of the application for amendment of plaint (Annexure P-9) detailed above, it is apparent that application is completely silent as to where the proposed amendments are intended to be incorporated within the body of the plaint; what is sought to be amended/added/omitted/alterd/substituted from the original pleadings. Further, application for amendment and proposed amended plaint do not adequately highlight the proposed amendments. Thus, the application for amendment and proposed plaint are not at all in consonance with the amended provisions of Order 6 Rule 17(2) CPC. The above Rule appears to have been completely ignored by the respondent No.1-plaintiff while moving the application. The learned trial Court also ignored the above material flaw in the application and proposed amended plaint while allowing the application. Therefore, the impugned order cannot withstand judicial scrutiny and is liable to be set aside, and is

hereby set aside. However, the party should not be penalized for any loose drafting by the counsel.

12. In view thereof, this revision is disposed of with liberty to respondent No.1-petitioner to avail the statutory remedy as available to him under the law, by taking all the pleas including the present cause of action as outlined in the application for amendment. Needless to say that it is always open to the petitioner-defendant No.1 to raise all objections as available to him under the law. It is clarified that there is no expression of opinion expressed on the merits of the case.

13. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

26.02.2024
Rimpal

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