2024:PHHC:172887

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

121 CR-7306-2024 (O&M)
Date of decision: 18.12.2024

M/s Dharam Singh and Co-owners and others

...Petitioners

Versus

Punjab State Grains Procurement Corp. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Atul Aggarwal, Advocate for the petitioners.

*****

VIKAS SURI, J.

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside order dated 06.11.2024 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Gurdaspur, whereby the application moved by the plaintiff-petitioners for amendment of plaint, has been dismissed.

2. Briefly stated, plaintiff-petitioners filed a suit for declaration that as per terms and conditions of agreement dated 27.06.2014 entered between the parties, the plaintiffs are entitled to monthly rent of their godowns at the fixed rate on guarantee basis (GHB) of Rs.4,65,000/- per month for the period from 20.01.2014 to 11.12.2014 along with interest @ 18% and further they are entitled to the

difference in the rate of rent, which is legally payable on guaranteed basis; and also for consequential relief of mandatory injunction directing the defendants to calculate and pay the rent as per GHB rate for the period from 20.01.2014 to 11.12.2014 along with interest.

2.1 Upon notice of the suit, the defendant-respondents filed written statement and contested the same. After completion of pleadings, the issues were framed and both the parties led their respective evidence in affirmative and when the case was fixed for rebuttal evidence, the present application seeking amendment of plaint was filed.

2.2 Reply to the amendment application was filed by the defendant-respondents opposing the same. On consideration of the rival submissions of the parties, the learned trial Court dismissed the application for amendment of plaint moved by the plaintiff-petitioners.

3. Aggrieved by the aforesaid, the petitioners have challenged the order dated 06.11.2024 (Annexure P-6) through the present petition.

4. Learned counsel for the petitioners argued that it is only from the statement of accounts submitted by the defendant-respondents that it transpired that less payment of rent has been made for the period from January 2014 to June 2014 and no payment has been made for the months of July to December 2014 as per the agreement on GHB basis. It is thus submitted that earlier the relief of mandatory injunction had been prayed for directing the defendant-respondents to calculate and pay the rent as per GHB rate for the aforesaid period along with interest and now after having become aware of the said calculations, plaintiff-petitioners

want to incorporate the prayer for recovery of the specified amount, on account of less rent paid to the plaintiff-petitioners besides interest thereon. Hence, amendment of corresponding pleadings, head note and prayer clause of the suit are required. It is further submitted that the difference of the rent, is the rightful due of the petitioners in terms of the agreement dated 27.06.2014. Thus, it has been prayed that the impugned order be set aside and the application under Order 6 Rule 17 CPC for amendment of the plaint be allowed.

5. Heard learned counsel for the petitioners and perused the relevant record with his able assistance.

6. Apparently, the plaintiff-petitioners have given their godowns on rent to Punjab State Grains Procurement Corporation Limited (PUNGRAIN), Gurdaspur and in that regard, an agreement dated 27.06.2014 had been entered into between the parties. The petitioners filed a suit for declaration that they were entitled to monthly rent at the fixed rate on guarantee basis (GHB) of Rs.4,65,000/- per month from the defendants, from 20.01.2014 to 11.12.2014 along with interest. The defendant-respondents filed their written statement opposing the suit wherein a preliminary objection regarding maintainability of the suit has been taken. It was further pleaded in the written statement that the plaintiff was being paid rent on actual utilization basis (AUB) and the details of the rent paid on AUB basis from 20.01.2014 to 11.12.2014 was given therein in tabulated form. The

aforesaid preliminary objection and the details of the rent paid, are reproduced hereunder for reference:-

> "1. That the suit is not maintainable in the present form as in the present suit the plaintiff is praying for recovery of rent of Rs. 4,65,000/- per month, on guarantee basis from 02.01.2014 to 11.12.2014 alongwith interest at the rate of 18% per annum from the Defendants. However, the plaintiffs has not affixed at valuable court fee with the suit. Therefore, the suit is liable to be dismissed on this ground only."

xxxxxxx

Sr. No.	Month	Rent (in Rs. Per month)
1.	May 2013	215712
2.	June 2013	454020
3.	July 2013	454020
4.	August 2013	454020
5.	September 2013	454020
6.	October 2013	454020
7.	November 2013	454020
8.	December 2013	454761
9.	January 2014	454761
10.	February 2014	454761
11.	March 2014	454761
12.	April 2014	454761
13.	May 2014	330987
14.	June 2014	42559
15.	July 2014 to December 11, 2024	Rent was not paid as godown was empty. As such, not to be reimbursed by the FCI, Gurdaspur.
16.	Onwards 12, December 2014	The plaintiff was started getting rent on GHB basis by the defendant as an agreement dated 12.12.2014 was executed PUNGRAIN and FCI.

7. Perusal of the record would further show that after both the sides had led their respective evidence in affirmative, the petitioners

moved the present application under Order 6 Rule 17 CPC for amendment of the plaint, on 22.08.2024, which on being contested has resulted in the impugned order. The trial Court was of the considered opinion that the relief for recovery of rent was time barred and the amendment would change the nature of the suit.

8. The issue for consideration in the instant petition is whether the amendment of plaint would be lawful, thereby permitting substitution of the original consequential relief of mandatory injunction directing the defendants to calculate and pay the rent as per GHB rate for the period from 20.01.2014 to 11.12.2014 along with interest, with the now sought relief for recovery of Rs.72,71,944/-, i.e., Rs.33,94,814/- on account of less rent paid to the plaintiffs for the aforesaid period and Rs.38,77,130/- on account of interest @ 12% per annum from January 2014 till its realization.

9. It would apposite to refer Order 6 Rule 17 CPC as well as Article 52 of the Schedule to the Limitation Act, 1963, which are extracted hereunder:-

> "**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.

xxxxxxxxxxxx

THE SCHEDULE
PERIODS OF LIMITATION
[*See* sections 2(j) and 3]
FIRST DIVISION–SUITS

Description of suit	Period of limitation	Time from which period begins to run
1 to 51 x x x x x x x		
52. For arrears of rent	Three years	Where the arrears become due
53 to 65 x x x x x x x		

10. It would be useful to refer to the original prayer clause contained in the plaint (Annexure P-2) as well as the prayer clause sought to be introduced by way of amendment, vide application dated 06.07.2024 (Annexure P-4) but filed on 22.08.2024. The said prayer clauses read as under:-

> "It is therefore prayed that the decree for Declaration to the effect that as per the term and conditions of the agreement dated 27.06.2014, entered into between the parties, the plaintiff are entitled to the monthly rent of their Godowns located at Village Khokher (Gurdaspur) at the fixed rate on guarantee basis (GHB) of Rs. 4,65,000/- per month from the defendants for the period from 20.01.2014 to 11.12.2014 alongwith interest at the rate of 18% per annum and the plaintiffs are further entitled to difference of the rate of rent of their godowns which is legally payable on guaranteed basis i.e. GHB basis w.e.f. 20.01.2014 to 11.12.2014 and decree for Mandatory Injunction directing the defendants to calculate and pay the rent as per GHB rate for the period from 20.01.2014 to 11.12.2014 along with interest at the rate of 18% per annum

from 20.01.2014 till its final payment to the plaintiffs, may kindly be passed in favour of the plaintiff and against the defendants with costs."

Proposed amendment:

"Decree for recovery of Rs.7271944.00/- i.e. Rs.3394814.00/- on account of the less rent paid to the plaintiffs and Rs.3877130/- on account of the interest @ 12% per annum from January 2014 till date alongwith future interest @ 12% per annum from February 2024 till its final payment to the plaintiffs with costs."

11. It is trite law that amendment of pleadings should be generally allowed unless by the amendment, a time barred claim is sought to be introduced or the amendment changes the nature of the suit. In the case a time barred cause of action has been introduced, the same would be a relevant factor for consideration. The Hon'ble Supreme Court in ***Life Insurance Corporation of India vs. Sanjeev Builders Private Ltd. and another***, **(2022) 16 SCC 1**, after referring to a plethora of earlier judgments, held that an amendment that raises a time barred claim, resulting in divesting of the other side of valuable accrued right (in certain situations), was an exception to the liberal approach to amendment of pleadings.

12. In the present case, the claim of the petitioners for recovery of Rs.72,71,944/-, on account of less rent paid to the plaintiffs along with interest thereon, pertains to the period from 20.01.2014 to 11.12.2014. In terms of Article 52 of the Schedule to the Limitation Act, the aforesaid claim for recovery of less rent paid for the month of

January 2014 could have been filed upto January 2017 and likewise, for the month of December 2014 upto December 2017. The amendment in the present case has been sought only on 22.08.2024, i.e., much after the remedy to seek recovery of rent was barred by law. The principle applicable would be that if the amendment would introduce a claim that, if brought by a fresh suit, would be barred by limitation on the day of presentation of the amendment application, then the amendment deserves to be declined. Allowing such an amendment would effectively divest the defendant of a valuable accrued right, emanating from the law of limitation. Thus, it is patent that by way of amendment of plaint, the plaintiff-petitioners are seeking to introduce a time barred claim, which is not permissible in law.

13. On a plain reading of the original prayer clause and the prayer proposed to be incorporated by way of amendment, the inescapable conclusion is that such amendment would fundamentally change the nature of the suit from that of one for declaration and mandatory injunction to a suit for recovery.

14. Moreover, the proviso to Order 6 Rule 17 CPC stipulates 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 parties could not have raised the matter before commencement of trial.

15. In the case at hand, there is neither any pleading nor any material has been referred to during the course of arguments, to enable

this Court to satisfy itself of the jurisdictional aspect for accepting the claim for amendment after the commencement of trial. On the contrary, perusal of the pleadings would show that at the first opportunity, a preliminary objection has been taken by the defendant-respondents that the suit is not maintainable as the effective prayer was for recovery of rent @ Rs.4,65,000/- per month on guarantee basis. The only plea raised in the application seeking amendment is that after the statement of accounts was submitted by the defendant-respondents that it transpired that less payment of rent had been made. The said plea is also fallacious on the face of the record as the detail of payment of rent were also given in the written statement and hence, the plaintiff-petitioners were made aware of the difference between their claimed rent and the rent actually received by them on actual utilization basis (AUB). The plaintiff-petitioners chose to contest the suit and only after both the sides had led their respective evidence, at the fag end of the trial, on 22.08.2024, the present application for amendment of plaint was moved. The trial Court has followed the ratio of the decision in ***Basavaraj and Indira and others*****, (2024) 3 SCC 705**, wherein it has been held that burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence, such amendment could not be sought earlier. It was further held that amendment is not a matter of right after the trial has commenced. The relevant portion of the judgment is extracted hereunder:-

"**10.** The proviso to Order 6 Rule 17CPC provides 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. In the case in hand, this is not even the pleaded case of Respondents 1 and 2 before the trial court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of Respondents 1 and 2-plaintiffs.

xxxxx

12. This Court in *M. Revanna* v. *Anjanamma* [(2019) 4 SCC 332] opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17CPC prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Para 7 thereof is extracted below : (SCC p. 335)

> "*7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit.* The proviso to Order 6 Rule 17CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. *Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances*. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."
>
> (emphasis supplied)"

16. Learned counsel for the petitioners in all fairness, as he has always been, submits that he has not come across any subsequent decision of the Hon'ble Supreme Court taking a contrary view than that taken in ***Sanjeev Builders case (supra)*** and ***Basavraj's case (supra)***, which have been relied upon and applied by the learned trial Court, while passing the impugned order.

17. In the light of the aforesaid discussion, this Court does not find any illegality or perversity in the impugned order dismissing the application seeking amendment of plaint. The plaintiff-petitioners have also failed to make out a case with regard to the jurisdictional aspect, in terms of the proviso to Order 6 Rule 17 CPC, to seek amendment at the

fag end of the trial. Rather, the admitted facts go to show that the plaintiff-petitioners have been grossly negligent in not seeking amendment of plaint soon after the written statement was filed in this case.

18. Accordingly, the present petition being bereft of merit, is dismissed in *limine*.

(VIKAS SURI)
JUDGE

December 18, 2024
sumit.k

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No