2025:HHC:35529

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CMPMO No.644 of 2022
Decided on 27th October, 2025

Nanak Chand
…Petitioner

Versus

Madan Lal
…Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

[1]Whether approved for reporting? Yes

For the petitioner	**:**	**Mr. Ajay Kumar, Senior Advocate, with Mr. Sunny Modgil, Advocate.**
For the respondent	**:**	**Mr. R.K. Gautam, Senior Advocate, with Mr. Jai Ram, Advocate.**

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, the petitioner has assailed the order passed by the learned Appellate Authority, in terms whereof, the application filed by the petitioner herein under Order 6 Rule 17 of the Civil Procedure Code seeking an amendment of the plaint has been dismissed.

2. Learned Senior Counsel for the petitioner has argued that the petitioner has filed a suit for injunction which was dismissed by the learned Trial Court. Feeling aggrieved, the petitioner preferred an appeal. During the pendency of the appeal, the petitioner preferred an application under Order 39

Rule 1 and 2 of the Civil Procedure Code, in which a status quo order was passed by the learned Appellate Court in terms of Annexure P-4 dated 18.03.2015. As the respondent did not adhere to the said status quo order, the petitioner filed an application for the appointment of a Local Commissioner to visit and inspect the land and report the nature and extent of construction being raised by the respondent over the suit land. The application was allowed by the learned Appellate Court and the Local Commissioner submitted his report which is also on record. By referring to the report of the Local Commissioner, learned Senior Counsel submitted that as the Local Commissioner stated in his report that he had found a house alongwith veranda which seemed to be freshly constructed andexisting upon the suit land, an application was filed under Order 6, Rule 17 of the Civil Procedure Code by the petitioner (Annexure P-8) seeking amendment of the plaint qua the events which took place during the pendency of the appeal. However, the same stands rejected in terms of the impugned order.

3. Learned Senior Counsel has submitted that a perusal of the impugned order would demonstrate that the same is per se

perverse as the learned Appellate Court has not appreciated that as the necessity to file the application under Order 6, Rule 17 of the Civil Procedure Code arose on account of the development, which took place during the pendency of the appeal, interest of justice demanded that the said application should have been allowed. Learned Senior Counsel has further submitted that otherwise also the reasons which have been assigned in the impugned order are not sustainable because, the learned Court went on to make observations on merit of the proposed amendment without understanding and appreciating that all that the petitioner was praying for was an amendment of the plaint which if allowed would have had given an opportunity to the other side to file a written statement thereto. Allowing the application, would not have amounted to accepting the contention which were proposed to be raised in the application, which obviously were to be proved by the parties by leading cogent evidence. Accordingly, learned Senior Counsel submitted that as the impugned order is bad, the same be set aside and the proposed amendment be allowed to be incorporated in the plaint.

4. On the other hand, learned Senior Counsel for the respondent has justified the impugned order. By referring to the reply filed to the application under Order 6 Rule 17, learned Senior Counsel submitted that as no case was made out to allow the amendment of the plaint, learned Appellate Court rightly rejected the application. Learned Senior Counsel further submitted that the report of the Local Commissioner was no report in the eyes of law for the reason that, as rightly pointed out by the learned Appellate Authority also, the Local Commissioner was neither a revenue Officer nor did he have any revenue documents with him so as to return a finding that the present respondent had carried out any fresh construction over the suit land. Accordingly, learned Senior Counsel submitted that as there is no merit in the present petition, the same be dismissed.

5. I have heard learned Senior Counsel for the parties and have also carefully gone through the impugned order as well as other documents appended with the petition.

6. The circumstances which resulted in the filing of the application under Order 6 Rule 17 at the appellate stage are not much in dispute. It is a matter of record that feeling aggrieved by

the dismissal of the suit, the petitioner preferred an appeal and in that appeal an application was filed under Order 39, Rule 1 and 2 of the Civil Procedure Code to restrain the respondent from carrying out any construction over the suit land. It is also a matter of record that the order of status quo was passed by the learned Appellate Court on the said application. It is also a matter of record that as the present petitioner was purportedly aggrieved by the fact that the respondent was not adhering to the status quo order, on his request, a Local Commissioner was appointed, who submitted a report in favour of the present petitioner and against the respondent. To be more precise the report of the Local Commissioner is quoted hereinbelow:-

> *"Respectfully submits that I was appointed as Local Commissioner by this Hon'ble Court vide order dated 15-03-2017 with the directions to visit the spot in the above titled case and to report about the nature and extent of construction if any upon the land measuring 0-10-62 hects. Comprised in Khewat No. 300 min, Khatoni No. 524, Khasra No. 733, 734 as entered in Jamabandi for the year 1997-98 situated village/ Up Mohal Heera Nagar (Amb). Tehsil Amb, Distt. Una (H.P)*
>
> *Accordingly, I visited the spot on 15-02-2017 at about 5:00 pm in the presence of both the parties alongwith Kamla Devi wife of Madan Lal, Sukhdev Singh son of Sh. Bardu Ram and the suit land was identified to me by both the parties. I issued the written notice to both the parties, but the defendant*

> *Madan Lal refused to sign the notice and even mis-behaved with me and also used filthy language against the court as well as against me. Accordingly, I prepared the presence sheet on the spot and taken signatures of the plaintiff and Sukhdev Singh, but defendant and his wife refused to sign the presence sheet. (Presence sheet as well as photographs of the spot is attached herewith). On my visit, I found a house alongwith varamdha which seems to me a freshly constructed one and was existing over the suit land and on the left side of the house two septik: tanks were existing and it seems to be a newly constructed. The construction materials like bricks, sand, bajn, sina elc, was lying on the spot.*
>
> *I have received my fees in the court room before my visit. The report is hereby submitted for the kind perusal of the Hon'ble Court."*

7. A perusal of this report demonstrates that after issuance of notice to the parties, the spot was inspected by the Local Commissioner, who reported that defendant refused to sign the notice and also misbehaved with the Local Commissioner etc. Be that as it may, it is further mentioned in the report that the Local Commissioner found a house alongwith veranda which seem to be freshly constructed and existing upon the suit land and on the left side of the house two septic tanks existed, which were also newly constructed. The construction material like bricks, sand, bajri, saria etc., were also lying on the spot.

8. In the light of this report, the application was filed under Order 6 Rule 17 of the Civil Procedure Code by the petitioner (Annexure P-8) which is dated 15.02.2019. The report of the Commissioner is dated 20.02.2017. In the application filed under Order 6, Rule 17 as the proposed amendments were qua the acts of the respondent which as per the petitioner took place during the pendency of the appeal in between the year 2017 upto 2019, the test of due diligence was satisfied by the petitioner and in these circumstances it would have been in the interest of justice in case the application was allowed by the learned Appellate Court and the petitioner was allowed to amend the plaint. The reason which weighed with the learned Appellate Court while rejecting the application as are mentioned in Para-5 and 6 of the impugned order do not satisfy this Court. The Local Commissioner was appointed by the Court and raising objections to the report of the said Local Commissioner, if any, lay in the domain of the respondent and it was not for the learned Court to have had commented upon the veracity of the report of the Local Commissioner in the manner in which it has been done in the impugned order. Had the learned Appellate

Court allowed the application filed under Order 6 Rule 17 of the Civil Procedure Code, it would not have amounted to the admission of the averments made therein by the respondent, who obviously would have an opportunity to file response thereto by way of an amended written statement.

9. Not only this, the amendments were thereafter to be proved in accordance with law by leading cogent evidence and the defendant would have got ample opportunities to substantiate before the appropriate Court regarding the veracity of the report of the Local Commissioner as well as the allegation of the petitioner as to whether or not during the pendency of the appeal any construction activity was carried out by the respondent.

10. All these important aspects of the matter have been completely lost sight of by the learned Appellate Court while rejecting the application. Learned Appellate Court has erred in not appreciating that in the peculiar facts of the case the application seeking amendment of the plaint deserved to be allowed as the petitioner did not intend to improve his case by seeking the amendment, but was seeking the amendments on

account of the subsequent events which took place during the pendency of the Appellate proceedings.

11. Accordingly, in light of the above observations, this petition is allowed. Impugned order dated 21.10.2022 is set aside. The proposed amendments are allowed to be incorporated in the plaint. Consequences to ensue. Parties through counsel are directed to appear before the learned Trial Court on 10.11.2025. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

October 27, 2025
(Vinod)