



CR No.7147 of 2018 (O&M)

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

**CR No.7147-2018 (O&M)
Decided on : 18.03.2025**

Mahender and another

...Petitioners

Vs

M/s Elite Realtech Private Limited

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners.

Mr. Adarsh Jain, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 22.03.2018 (Annexure P-10), passed by the Court of learned Civil Judge (Junior Division), Faridabad vide which the application filed by the respondent-plaintiff under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of plaint (Annexure P-3) was allowed.

2. The facts, as emanating from the revision petition, are that initially, one M/s Shalimar Town Planners Private Limited (sister concern of the present respondent-plaintiff) instituted a suit for permanent injunction asserting that an agreement to sell dated 04.01.2007 (Annexure P-1) had been executed between the parties. Written statement (Annexure P-2) was filed. Subsequently, an application for amendment of plaint (Annexure P-3) was filed seeking to convert the suit from permanent injunction to a suit for



possession by way of specific performance of the agreement to sell with consequential relief of permanent injunction. This application is stated to have been allowed. However, subsequently, the suit was withdrawn on 09.08.2011 on the ground that a compromise had been arrived at between the parties and a fresh agreement had been executed.

3. Subsequently, another suit for permanent and mandatory injunction (Annexure P-4) on the strength of agreement to sell dated 21.01.2010 with respect to 55 acres of land was instituted by the respondent-plaintiff. Written statement was filed. The said suit was also amended and it was converted into a suit for possession by way of specific performance with consequential relief of permanent injunction (Annexure P-5).

4. During the pendency of the suit, an application for amendment of the plaint (Annexure P-8) was moved. It was averred that the resolution in favour of the authorized representative namely Sh. Jay Shankar through whom the suit had been filed was of 29.03.2010 whereas actually the said resolution pertained to the land at Gurugram and that the land in the present case was situated at Faridabad for which the resolution had been passed on 08.03.2010 authorizing Jay Shankar to file the suit. This application was opposed by way of a reply (Annexure P-9). Vide the impugned order, the said application was allowed leading to the filing of the present revision petition.

5. I have heard learned counsel for the parties.

6. Sh. Sanjiv Gupta, learned counsel for the petitioners-defendants has strenuously urged that the impugned order is not sustainable.



Referring to the previous suit filed by the respondent-plaintiff, the application for amendment submitted therein, the subsequent order of withdrawal of the suit which has duly been reproduced in the revision petition as also the plaint, written statement, application for amendment and reply thereto in the present case, learned counsel submits that the respondent-plaintiff has been initiating one litigation after the other and has been harassing the petitioners-defendants. He submits that the resolution pertaining to the land at Gurgaon was annexed and it is only when Sh. Jay Shankar was cross-examined, the application for amendment was moved. He submits that the respondent-plaintiff wanted to fill up the lacunae which is not permissible. He also submits that more than 30 opportunities had already been availed by the respondent-plaintiff for leading evidence after which the application for amendment was filed. He submits that as per the provisions of Order 6 Rule 17, no amendment could have been permitted after the commencement of the trial but the learned trial Court did not take into consideration the settled law on the subject and erroneously allowed the application.

7. Per contra, learned counsel for the respondent-plaintiff submits that there is no illegality in the impugned order. He submits that it was only on account of an error/oversight that a wrong resolution was filed alongwith the plaint. Even in the affidavit of Sh. Jay Shankar when he appeared as a witness, the same resolution was mentioned. Learned counsel has produced the original minute book and has referred to the resolutions dated 08.03.2010 and 29.03.2010 which were passed as regards Faridabad and Gurgaon respectively. He submits that the defect in any case is a curable



defect and, therefore, the trial Court rightly allowed the application. In support of his contentions, learned counsel has placed reliance upon the judgment of the Supreme Court of India in ***United Bank of India versus Naresh Kumar and others (1996) 6 Supreme Court Cases 660.***

8. I have considered the submissions made by learned counsel for the parties.

9. The law on the subject is now well settled. Order 6 Rule 17 CPC clearly lays down that an application for amendment is not to be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial, though it is also true that amendment otherwise can be allowed at any stage. In ***Revajeetu Builders & Developers versus Narayanaswamy & Sons & Others 2009 (10) SCC 84***, the Supreme Court of India examined the entire law on amendment of pleadings starting from the decision of the privy council in ***Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 Privy Council 249*** wherein it was observed as under:-

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."



10. A perusal of the aforesaid observations of the privy council as far back as in 1922 would show that it is the same law which is holding the field even today. It is not in doubt that powers of amendment should be exercised liberally but by means of the amendment, the nature and subject matter should not change. The Supreme Court then examined various judgments rendered by the English Courts, the Supreme Court, the Bombay High Court etc. and certain principles were culled out which ought to be taken into consideration while allowing or rejecting an application for amendment;

On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ?

(2) Whether the application for amendment is bona fide or mala fide ?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And



(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

11. The said view of the Supreme Court of India has recently been reiterated in the case of ***Basavaraj versus Indira And Others 2024 (4) RCR (Civil) 115*** also. Reference can also be made to the judgment of the Supreme Court of India in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited & Anr. 2022 AIR (Supreme Court) 4256*** wherein also, the law as regards amendment of pleadings was summed up;

(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)

12. Reverting to the case in hand, no doubt, evidence of the respondent-plaintiff had started and as per the learned counsel for the petitioners-defendants, around 30 opportunities had already been availed by the respondent-plaintiff to lead its evidence. The said fact has not been denied by learned counsel for the respondent-plaintiff. Be that as it may, the fact remains that the only amendment that was sought to be made was to



mention the date of resolution as 08.03.2010 instead of 29.03.2010 and a resolution dated 08.03.2010 was sought to be placed on record instead of the resolution dated 29.03.2010. The original minute book has been produced in the Court and the same has been perused. There are two resolutions one dated 08.03.2010 and the second dated 29.03.2010. The resolution dated 08.03.2010 authorizes Sh. Jay Shankar to sign pleadings etc. and to file cases qua land situated at Faridabad whereas the resolution dated 29.03.2010 authorizes him to carry out the same acts with regard to land situated at Gurgaon. This, even otherwise, is a curable defect. In the considered opinion of this Court, no illegality was, therefore, committed by the trial Court in permitting the said amendment.

13. In the case of ***United Bank of India versus Naresh Kumar and others (supra)***, one such issue had arisen before the Supreme Court of India. It was being examined by the Supreme Court of India as to whether the plaint had been duly signed and verified by a competent person. In that case, no resolution had been placed on record. The pleadings, however, were duly signed by one of the officers of the plaintiff-bank. It was held by the Supreme Court of India that in the absence of a resolution and in cases where pleadings had been signed, a corporation could ratify the said action of its officers in signing the pleadings and such ratification could be expressed or implied. The Supreme Court went to the extent of holding that even if no ratification had been done, the Courts ought to exercise jurisdiction under Order 41 Rule 27 (1) (b) CPC to direct the production of a power of attorney;



10. *It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under [Order 6 Rule 14 of the Code of Civil Procedure](#) a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. [Order 29 Rule 1 of the Code of Civil Procedure](#), therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with [Order 29 Rule 1 of the Code of Civil Procedure](#) it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors [Order 29 Rule 1 of the Code of Civil Procedure](#), as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of [Order 6 Rule 14 of the Code of Civil Procedure](#). A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by it's officer.*



11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27 (1) (b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

14. It is, therefore, clear that such ratification and subsequent production of a resolution/power of attorney are only formal in nature and a party should not be non-suited on the said ground. As observed earlier, the trial Court, under the circumstances, committed no illegality by allowing the application for amendment.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

18.03.2025

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(VIKRAM AGGARWAL)
JUDGE

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