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CR-4664-2018 1

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

CM-7722-CII-2026 IN/& CR-4664-2018
Date of decision : 23.04.2026

Malook Chand

... Petitioner

Versus

Mohinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Aseem Sharma, Advocate
for the petitioner.

Mr. S. S. Salar, Advocate,
Ms.Tisha Joshi, Advocate and
Mr.Hiten Chugh, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

CM-7722-CII-2026

1. This is an application for restoration of the revision petition which was disposed of.

2. For the reasons stated in the application which is supported by an affidavit, the application is allowed and the order dated 23.03.2026 is recalled and the main petition is ordered to be restored to its original number.

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1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 10.05.2018 passed by the Civil Judge (Jr.Div.), Fatehgarh Sahib.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that in the present case, the amendment which is sought is on account of facts which have emerged after filing of the suit which was initially filed in the year 2009. It is submitted that in the original suit, a prayer for permanent injunction was made for restraining the defendant from interfering in the peaceful use and enjoyment of the plaintiff over the passage which was shown by letters A C D E F B in the site plan in red colour. It is submitted that it is the case of the petitioner-plaintiff that in December, 2016, the defendant had blocked the said passage and to prima-facie highlight the said fact, reference has been made to photographs which has been annexed as Anenxure P-4. It is submitted that in order to include the said subsequent facts, which are necessary for the proper and final adjudication of the case, the petitioner had moved an application under Order 6 Rule 17 CPC which has been dismissed by the trial Court on surmises and conjectures. It is further submitted that earlier the suit filed by the petitioner was dismissed but the Ist Appellate Court vide order dated 12.02.2018 had remanded the case with a specific direction to frame fresh issues on all the controversial pleadings and that after remand due opportunities have to be given to both

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the parties to raise all necessary pleas and to lead evidence in support of the same. It is submitted that the impugned order be set aside and the application filed by the petitioner be allowed.

ARGUMENTS ON BEHAL OF THE RESPONDENT

3. Learned counsel for the respondent, on the other hand, has submitted that initially the suit which was filed by the petitioner was for permanent injunction and the said suit was dismissed vide judgment dated 19.02.2014. It is submitted that thereafter an appeal was filed by the petitioner in the year 2014 and the case was remanded. It is submitted that as per the remand order, the case was to be decided on the basis of pleadings of the parties which were already there and thus, the petitioner could not have sought amendment of the plaint and the impugned order is in accordance with law and deserves to be upheld.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order dated 10.05.2018 is against law and deserves to be set aside and the present revision petition deserves to be allowed for the reasons stated hereinafter.

5. The petitioner who is the plaintiff had filed a suit for permanent injunction with the following prayers:-

“Suit for permanent injunction restraining the defendant, his agents and servants from interfering into the peaceful use and enjoyment of the plaintiff over the passage as shown by letters A C D E F B in red colour

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in the site plan attached with the plaint, situated at Vill. Chunni Khurd, Tehsil Bassi Pathanan, Distt. Fatehgarh Sahib and also from encroaching upon any portion of the above said passage by way of raising any type of construction over the same or in any other manner, forcibly, illegally or in any other manner.”

A perusal of the above would show that a restraint order was sought against the defendant from interfering in the peaceful use and enjoyment of the plaintiff over the passage which was depicted in letter A C D E F B in red colour in the site plan attached to the plaint. The said suit was dismissed vide judgment and decree dated 19.02.2014.

6. It is not in dispute that the petitioner had filed an appeal against the said judgment and decree and vide judgment dated 12.02.2018, the said appeal was allowed with the following observations / directions:-

“Accordingly, the case is remanded to the Lower Court/Successor Court with a direction to the court to frame fresh issues on all the controversial pleadings. After affording a reasonable opportunity to the parties to adduce their respective evidence in respect of their pleadings, the court shall adjudicate upon the matter afresh from from all legal and factual aspects raised and contested. The appeal in hand is accordingly disposed off. Parties are directed to appear before the learned lower court/ successor court on 21.02.2018. The record of the learned trial court with copy of this judgment and decree be transmitted to the same. The record of appeal be consigned to the record room (J) Fatehgarh Sahib.

Pronounced

on: 12th Feburary 2018”

A perusal of the above judgment, which admittedly has

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attained finality, would show that the case had been remanded to the trial Court with a direction to frame fresh issues on all the controversial pleadings and due opportunity was also required to be given to the parties to adduce their evidence in respect to the pleadings.

7. It is a matter of settled law that when a case is remanded, the trial Court is required to re-decide the case in accordance with law.

8. It is not in dispute before this Court that before the fresh issues were framed, in pursuance of the judgment dated 12.02.2018, the petitioner filed an application dated 11.04.2018 (Annexure P-2) for the amendment of the plaint in order to incorporate a subsequent event and the said subsequent event was with respect to the fact that the defendant had blocked the passage and the flow of the dirty water of the house of the petitioner by raising a wall / construction and accordingly, the plaintiff wanted to add paragraph 7A to 7C as well as add the prayer for mandatory injunction. Paragraph 6 of the application for amendment which makes a reference to the addition to be made in the prayer clause is reproduced hereinbelow:-

“6. That in the heading of the plaint after the word, "manner" at the end of the title of the suit as well as in the prayer clause after the word, "manner" in 11th line, "And suit for Mandatory Injunction directing the defendant to remove the encroachment/ construction raised by him at letter D to E shown in the Site Plan Ex. P-2 and at letter A to B shown in the alleged Site Plan produced by the defendant in Ex. D-1, in the suit property/passage shown at letter ACDEFB in Red colour in the Site Plan Ex. P-2 situated at Village Chunni Khurd Tehsil Bassi Pathana Distt. Fatehgarh Sahib and to restore the same in its original position

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and the plaintiff be put in the use and enjoyment of the same as owners."

9. In order to prima-facie show that there is a blockage, the petitioner has annexed the photographs Annexure P-4. The trial Court, however, has dismissed the said application under Order 6 Rule 17 CPC.

10. From the abovesaid facts, it is apparent that the prayer for mandatory injunction was made with respect to the same passage regarding which a permanent injunction had been sought and the said prayer was made on account of a subsequent event. In case the amendment is not allowed, then, in a situation even if the petitioner-plaintiff is able to establish that he has a right in the passage in question still no effective relief would be given to the petitioner as there is no prayer for mandatory injunction and it is the case of the petitioner that said passage has been blocked by the defendant. It is thus apparent that the said amendment is necessary for the proper and final adjudication of the case. It has been repeatedly held that all necessary amendments should be allowed and the Court is not required to go into merits of the amendment at the time of allowing the same. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.** reported as **2006(2) RCR (Civil) 577**. The relevant portion of the said judgment is reproduced hereinbelow:-

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13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

xxx xxx xxx

Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in [Sampath Kumar vs. Ayyakannu and Another](#), (2002) 7 SCC 559.

11. The amendment in the present case, apart from being necessary, does not change the nature of the suit as the issue is primarily with respect to the same passage, which as per the case of the plaintiff, he is entitled to use. Moreover, since the event of blocking of the said passage is a subsequent event, thus, the said plea could not have been taken at the time of the institution of suit, which was filed in the year 2009. Thus, it cannot be



stated that the petitioner was not diligent in raising the said plea. At any rate, no prejudice would be caused to the defendant as the defendant would have the right to file an amended written statement and to raise all pleas to rebut the pleas raised in the amended plaint.

12. Keeping in view the above said facts and circumstances, the present revision petition is allowed and the impugned order dated 10.05.2018 is set aside and the application for amendment filed by the petitioner-plaintiff is allowed.

13. Needless to say that due opportunity would be given to the defendant to file amended written statement to the amended plaint. It is made clear that this Court has not opined on the merits of the amendment and it would be open to both the parties to raise all pleas in support of their respective pleadings during the course of trial.

(VIKAS BAHL)
JUDGE

April 23, 2026.
Davinder Kumar

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