



CR No.6096 of 2023 (O&M)

1

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

211

Civil Revision No.6096 of 2023 (O&M)

Date of decision: May 4th, 2026

Ashok Kumar

.....Petitioner

Versus

Gurdial Saini (since deceased) through LR's and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sandeep Bansal, Ms. Nishtha and Ms. Shaveta, Advocates
for the petitioner.

Ms. Ekta Thakur, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a civil revision petition under Article 227 of the Constitution of India for quashing the impugned order dated 27.09.2023 passed by District Judge, Hoshiarpur, whereby application under Order 6 Rule 17 CPC for amendment of the title of the appeal has been allowed.

2. The facts which are apparent from the impugned order dated 27.09.2023 and are not disputed before this Court are that Hitesh, Harshman and Chaman Lal were not made parties in the memo of parties of the appeal which was instituted by Gurdial Saini (deceased) through his LR's (respondent No.1 herein) as the names of the said three persons were not mentioned in the judgment of the trial Court, although the same were recorded in the decree sheet. The said mistake in the grounds of appeal had occurred on account of the mistake committed by the trial Court. On 01.04.2021 when the said mistake came to the notice of respondent No.1 (appellant before the First Appellate Court), an application under Order 41

**CR No.6096 of 2023 (O&M)****2**

Rule 20 CPC was filed for rectification of the error and for impleading the abovesaid persons in the array of the parties.

3. During the pendency of the said application, respondent No.1 moved an appropriate application under Section 151 CPC for rectification of the judgment of the trial Court and vide order dated 24.03.2022, the said rectification was carried out in the judgment of the trial Court. The order dated 24.03.2022 is annexed as Annexure P-2 and a perusal of the same would show that all the three names of Hitesh, Harshman and Chaman Lal were ordered to be added by the trial Court. Since the said names had been added in the judgment of the trial Court, respondent No.1 who had filed an application under Order 41 Rule 20 CPC withdrew the application on 31.03.2022 by making a statement that he would file a fresh application for amendment of the headnote of the grounds of appeal along with certified copy of the judgment and in view of the same, the application under Order 41 Rule 20 CPC was allowed to be dismissed as withdrawn. The said order in which the withdrawal was sought was passed in the presence of Shri V.K. Gupta, who was the counsel for the present petitioner and the other persons before the First Appellate Court. On 21.04.2022, respondent No.1 accordingly filed an application under Order 6 Rule 17 CPC.

4. The First Appellate Court, while considering the said application and ordering the impleadment of the said three persons vide the impugned order dated 27.09.2023, took into consideration provision of Order 41 Rule 20 CPC.

5. The First Appellate Court further observed that the judgment and decree in the present case was passed on 25.05.2017 and the appeal was

**CR No.6096 of 2023 (O&M)****3**

filed by respondent No.1 before the First Appellate Court on 06.07.2017 and the names of the said three persons could not be mentioned on account of an error of the trial Court in the name of the parties in the judgment and that respondent No.1 had moved all the required applications on account of which the delay occurred. It was observed that the said three persons who were parties as per the decree of the trial Court were necessarily required to be added as party as the matter could not be adjudicated effectively without adding them as parties and in view of the same, the First Appellate Court invoked its power under Order 41 Rule 20 CPC and made the said three persons as parties and accordingly, while invoking the said power, even allowed the application under Order 6 Rule 17 CPC in the interest of justice and the same was done subject to the payment of ₹3,000/- to the respondents therein.

6. The First Appellate Court had recorded reasons as were required to be recorded under Order 41 Rule 20 sub rule (2) CPC as the persons sought to be added in the appeal, were being added, after the expiry of the period of limitation. It was recorded in the impugned order that the mistake of not making the abovesaid persons a party in the memo of appeal had occurred on account of the mistake in the judgment of the trial Court where also the said persons were not made parties and further that the rules and procedure are handmaids of justice and should advance the cause of justice, and accordingly, ordered the impleadment of the said persons as party.

7. The memo of parties which was originally filed along with the appeal and was in accordance with the parties shown in the judgment of the

**CR No.6096 of 2023 (O&M)****4**

trial Court, is reproduced hereinbelow:

“Gurdial Saini deceased through

1. Smt. Leela Saini deceased through

a. Gur Dutt Saini.

b. Ravi Dutt Saini (sons)

c. Meenakshi Sood

d. Rooma Saini (daughters)

All residents of 86, Hira Colony,

Hoshiarpur

...Defendants/appellants

Versus

1. Smt. Shanti Devi deceased through

i) Raj Kumar

ii) Inder Mohan

*iii) Ashok Kumar sons of Tarsem Lal pre-deceased sons
of Shanti Devi*

*2. Sohan Lal Saini S/o Sh. Hira Ram Saini R/o 99, Hira
Colony, Hoshiarpur through his attorney and his wife
Geeta Saini.*

..Plaintiffs/Respondents

*3. Sh. Girdhari Lal Saini S/o Sh. Hira Ram R/o 5, Naya
Haridwar Colony, Jwalapur Haridwar, (Uttranchal).*

*4. Kaushalya Devi R/o House No. 42, Model Colony,
Hoshiarpur*

Dated: 11-08-2023”

**CR No.6096 of 2023 (O&M)**

5

8. The First Appellate Court had ordered the adding of Hitesh, Harshman as respondent No.1(iv), 1(v) therein respectively and ordered the addition of Chaman Lal as respondent No.4(a) therein. From the above, it is apparent that although the estate of Shanti Devi, who is the plaintiff and the main contesting respondent before the First Appellate Court, was already duly represented but in order to have the memo of parties in appeal in consonance with the decree of the trial Court, the said parties were also ordered to be added. It is the said order which has been challenged by the petitioner Ashok Kumar who is the grandson of Shanti Devi and has been impleaded as respondent No.1(iii) in the first appeal. Hypertechnical points have been taken on behalf of the petitioner to challenge the impugned order apparently only to delay the decision of the First Appellate Court.

9. The first point raised on behalf of the petitioner is that the application under Order 41 Rule 20 CPC was maintainable and not an application under Order 6 Rule 17 CPC and the impugned order deserves to be set aside as the First Appellate Court has entertained an application under Order 6 Rule 17 CPC. The said argument is completely baseless. A perusal of the impugned order would show that the Appellate Court had invoked its power under the provision of Order 41 Rule 20 CPC while passing the impugned order. Order 41 Rule 20 CPC is reproduced hereinbelow:

*“20. **Power** to adjourn hearing and direct persons appearing interested to be made respondents:*

(1) Where it appears to the court at the hearing that any person who was a party to the suit in the court from whose decree the appeal is preferred, but who has not



been made a party to the appeal, is interested in the result of the appeal the court may adjourn the hearing to a future day to be fixed by the court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.”

10. A perusal of the abovesaid provision would show that the Court has the powers, which can be exercised even *suo moto*, to direct a person to be made a respondent, where at the time of hearing, it appears to the Court that such person who was a party to the suit from whose decree, the appeal is preferred, has not been made a party and is interested in the result of the appeal. In the present case, the said power has been invoked and it was necessary to invoke the said power as in the memo of parties of the grounds of appeal, the three persons, who have been ordered to be added, were not made a party on account of a mistake made by the trial Court in its judgment. Even the aspect with respect to limitation has been duly taken into consideration by the First Appellate Court in the impugned order. Moreover, it is not the said three persons who have approached this Court and the present petitioner who is already a party has chosen to challenge the impugned order, apparently to delay the decision in the appeal. Additionally, it would be relevant to mention that even under the provisions of Order 6 Rule 17 CPC, it is open to a party to amend the pleadings which would necessarily include the headnote of a case. Order VII Rule 1 CPC states

**CR No.6096 of 2023 (O&M)**

7

the particulars to be contained in a plaint and includes the name, description and place of residence of the defendant in addition to the other aspects. Plaint, undisputably, would fall within the meaning of pleadings, the amendment of which can be sought under Order VI Rule 17 CPC. Once the plaint is necessarily required to state the details of the defendants, it cannot be said that the amendment of the plaint would not include the amendment of the headnote. The name of the defendant or his father or his residence may have been wrongly mentioned and the provisions of Order VI Rule 17 CPC should not be construed so narrowly to not include the rectification of the said mistake etc. by filing an application for amendment. At any rate, the said aspect becomes academic as the Appellate Court has invoked the provisions of Order 41 Rule 20 CPC.

11. Learned counsel for the petitioner has next submitted that the said Chaman Lal had died on 23.11.2017 and thus could not have been ordered to be added as a party. Even the said argument does not call for setting aside the impugned order. It is not in dispute that the judgment and decree of the trial Court was passed on 25.05.2017 and the appeal against the same was filed on 06.07.2017. On the date when the judgment was passed as well as on the date on which the appeal was filed, the said Chaman Lal was alive and thus since the amendment made in the memo of parties would relate to the date of the filing of the memo of parties, it would be necessary to add all the persons who were party before the trial Court on the date of passing of the judgment and decree and on the date of filing of the appeal. Learned counsel for the respondents has submitted that at a subsequent stage an application can be moved to bring on record the LRs of Chaman Lal. In



the said circumstances, the adding of Chaman Lal cannot be stated to be incorrect.

12. A coordinate Bench of this Court in the case of ***Paramjit Singh Versus Additional District Judge, Ludhiana***, reported as ***1992 PLJ 480*** (check whether challenged or not) had in similar circumstances held as under:

“4. The rule, as reproduced above, was inserted by virtue of Section 87, Civil Procedure Code (Amend.) Act 1, 1976, w.e.f February 1, 1977. A perusal of the rule, quoted above, would show that the Court has power even suo moto to adjourn the hearing to a future date and direct that any person who was a party to the suit in the Court from whose decree the appeal has been preferred, but who has not been made a party to the appeal, be made a respondent. Sub-rule (2) of Rule 20 of Order XLI, Civil Procedure Code, however, requires that no respondent shall be added after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs it thinks fit. It is, thus, clear that even though the limitation might have expired but if the Court finds, for reasons to be recorded, a sufficient cause to implead a person as respondent, then the same can be done.....”

6. The view taken by the Lahore High Court in Labhu Ram's case (supra) was not approved by the Full Bench of this Court in Notified Area Committee v. Gobind Ram AIR 1959 Punjab 277 (Full Bench). It was held by the Full Bench in the aforesaid case that if a party to the original proceedings is not impleaded in appeal on account of bona fide mistake on the part of the appellant, the appellate Court has ample power under Order XLI



Rule 20, Civil Procedure Code to allow the mistake to be rectified and the party to be added. The Full Bench further held that apart from the provisions contained in Order XLI Rule 20, Civil Procedure Code, the appellate Court has inherent powers to permit the parties to be added in appeals in suitable cases and the language of Order XLI Rule 20 was not exclusive or exhaustive so as to deprive the appellate Court of the inherent powers in this respect.....”

“11.Coming to the facts of the case in hand, as mentioned earlier, the names of defendant Nos. 5 to 17 were not mentioned in the judgment, although their names did find a mention in the decree-sheet. It has been the consistent case of the respondents in this revision that the Memorandum of Appeal was prepared from the certified copy of the judgment and not from the decree-sheet. It is aximatic that no party should suffer for the acts of omission and commission either of the Presiding Officer of the Court or by the Court officials. The procedural laws are not pitfalls so as to trap the litigants on mistakes though made bona fide. The whole procedure dealing with civil suits has been made with a view to advance the cause of justice. The Court of the Additional District Judge was justified, in the totality of the circumstances of the case, to allow the prayer of the appellants (in the appeal) to implead defendant Nos. 5 to 17 as party to the appeal even though the period for filing the appeal against them had already expired.

12. Finding no infirmity and illegality in the order under revision, I dismiss this revision, leaving the parties to bear their own costs. Parties through their counsel are directed to appear before the Court of learned Additional District Judge, Ludhiana, on May 27, 1992.”



13. The Hon'ble Supreme Court in the case of *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* reported as *(2010) 8 Supreme Court Cases 329*, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

14. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order dated 27.09.2023 is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.



CR No.6096 of 2023 (O&M)

15. Pending applications, if any, stand disposed of.

May 4th, 2026
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes