PLRonline 456587

(2022-4)208 PLR 745
PUNJAB AND HARYANA HIGH COURT
Before: Mrs. Justice Manjari Nehru Kaul.
SURJIT KAUR – Petitioner,
Versus
HARPINDER KAUR and another – Respondents.
CR-5546-2018

Civil Procedure Code, 1908 (V of 1908) Order 6, Rule 17 – Petitioner has merely stated that inadvertently and due to sheer slip, some lines had been left out in the written statement – No doubt, the petitioner was not required to mention the words "due diligence" in the said application but at the same time it was incumbent upon her to show by way of necessary averments that on account of some intervening circumstances, the relevant facts could not be mentioned or came to be omitted at the first instance despite exercise of due diligence – It cannot be digested that the petitioner being mother-in-law of respondent No.1 would have been unaware that after the death of her son, respondent No.1 i.e. her daughter-in-law had remarried – Petition dismissed.

[Para 12, 13]

Cases referred to:-

1. (2017-3)187 PLR 773 (SC), *P.K.Palanisamy v. N. Arumugham.*
2. (2010-1)157 PLR 231 (SC), *Surender Kumar Sharma v. Makhan Singh.*
3. (2009-2)154 PLR 490 (SC), *Vidyabai v. Padmalatha.*
4. 2005(3) RCR (Civil) 530, *Salem Advocate Bar Association v. Union of India.*

Mr. Gagandeep Singh Sirphikhi, for petitioner. *Mr. T.P.S.Tung,* for the respondents.

****

Manjari Nehru Kaul, J.(Oral) – *(13th September, 2022)* – Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.05.2018 (Annexure P-6) vide which an application filed by the petitioner-defendant for seeking amendment of the written statement, was dismissed.

2. Learned counsel appearing for the petitioner inter alia contends that the impugned order suffers from material irregularity being contrary to the settled law pertaining to the amendment of pleadings. He has vehemently argued that the trial Court while passing the impugned order failed to appreciate that mere mentioning of a wrong provision of law could not be a ground for denial to exercise its jurisdiction, which otherwise vested in it under other provisions of law. He submits that mere delay in filing of an application for amendment could not have been a ground to refuse the amendment, which had been sought by her vide application dated 23.04.2018 (Annexure P-4). He further submits that it was on account of an accident slip that the facts sought to be incorporated by way of the proposed amendment could not be included initially when the written statement was filed by her. He further urged that the proposed amendment was necessary for just and effective adjudication of the matter in issue between the parties. In support, learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in *P.K.Palanisamy v. N. Arumugham and another,* [1] (2017-3)187 PLR 773 (SC), and *Surender Kumar Sharma v. Makhan Singh,* [2] (2010-1)157 PLR 231 (SC).

3. *Per contra,* learned counsel for the respondents while opposing the prayer and submissions made by learned counsel for the petitioner submits that the application

(Annexure P-4) had been moved by the petitioner-defendant with an oblique motive to delay the proceedings before the trial Court. It is contended that the application (Annexure P-4) had been moved by the petitioner at a highly belated stage i.e. when the defendants evidence was underway. Hence, the impugned order could not be faulted with and had been rightly dismissed by the trial Court. He also contends that the application, which had been filed by the petitioner was not maintainable as under the garb of Section 151 CPC, the petitioner was in fact trying to seek amendment of the written statement and had the proposed amendment been actually allowed, it would have changed the entire complexion of the defence of the petitioner.

4. Heard learned counsel and perused the relevant material available on record.

5. This Court has no hesitation in observing that merely because a wrong provision of law had been mentioned on an application or for that matter even in the absence of the mentioning of any provision of law, the same would not come in the way of a Court for exercising its jurisdiction.

6. Hon'ble Supreme Court in *P.K.Palanisamy's case* (supra) has also held that mentioning of a wrong provision or non-mentioning of a provision of law would not in any manner invalidate an order, if the Court and/or statutory authority has been vested with the requisite jurisdiction.

7. It would be relevant to reproduce Order 6 Rule 17 CPC, which is as follows:

> "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."

8. A bare reading of proviso to Order 6 Rule 17 makes it abundantly clear that once the trial has commenced, amendment of pleadings should not be allowed unless and until the parties seeking such amendment is able to show that despite exercise of due diligence, the proposed amendment could not have been brought forth earlier or before the commencement of the trial.

9. Hon'ble Supreme Court in *Vidyabai v. Padmalatha,* [3] (2009-2)154 PLR 490 (SC), has held as under:

> "14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

10. Hon'ble Supreme Court in *Salem Advocate Bar Association v. Union of India,* [4] 2005(3) RCR (Civil) 530 has also held as under:

> "27. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The

object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

11. However, at the same time, this Court cannot turn a blind eye to the fact that the application (Annexure P-4) had been moved by the petitioner-defendant at a highly belated stage of the trial and when the defendant's evidence was underway. It was imperative upon the petitioner to show that despite exercise of due diligence, she was unable to incorporate the facts sought to be incorporated by way of proposed amendment in her written statement.

12. A perusal of the application filed under Section 151 CPC reveals that the petitioner has merely stated that inadvertently and due to sheer slip, some lines had been left out in the written statement. No doubt, the petitioner was not required to mention the words "due diligence" in the said application but at the same time it was incumbent upon her to show by way of necessary averments that on account of some intervening circumstances, the relevant facts could not be mentioned or came to be omitted at the first instance despite exercise of due diligence.

13. In the instant case, it cannot be digested that the petitioner being mother-in-law of respondent No.1 would have been unaware that after the death of her son, respondent No.1 i.e. her daughter-in-law had remarried.

As a sequel to the above, the present revision petition being devoid of any merit, stands dismissed.

R.M.S. – Petition dismissed.