

(1991) 11 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2850 of 1991 (O. and M.) and Civil Miscellaneous No"s. 7248-CII and 7249-II of 1991

Foremost Diaries Limited and Others

APPELLANT

Vs

Banarsi Dass Amar Nath

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (1992) 101 PLR 227

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : O.P. Hoshiarpuri, for the Appellant; M.L. Saggar and O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Chowdhri, J.—Brief facts giving rise to this petition are that the respondent-firm instituted a suit for rendition of accounts and for payment of the amount found due against the petitioners on 4-2-1987 alleging that the former was appointed as agent of the latter and was carrying on sale of the goods of the latter on commission basis. In the written statement, the defendant-petitioners took an objection that no suit for rendition of accounts by an agent against the principal was maintainable. Ultimately, the suit of the plaintiff-respondent was dismissed on 31-10-1989. The plaintiff-respondent preferred an appeal on 22-1-1990. During the pendency of the appeal, the plaintiff-respondent filed an application under Order 6, Rule 17 of the CPC on 26-3-1991 for permission to amend the plaint and ask for a decree for Rs. 48,723.13 paise. The application was contested by the defendant-respondents in appeal. The learned Additional District Judge, Ludhiana, by order dated 30-4-1991 allowed the amendment subject to payment of Rs. 300/- as costs. Aggrieved by the order, the defendants have preferred this revision.

2. The contention of learned counsel for the petitioners is that even though

objection regarding maintainability of the suit for rendition of accounts by an agent against the principal had been taken at the earliest possible opportunity, the plaintiff persisted in not carrying out the amendment. It was after more than one year of the riling of the appeal that the plaintiff came forward for seeking amendment. It was submitted that the suit for recovery of a specified amount which allegedly related to the account for the period 1-5-1985 to April, 1986 had become barred by limitation. The learned counsel, therefore, contended that a valuable right had accrued in favour of the defendants and the defendants could not be deprived of the said right by permitting the amendment. Reliance has been placed on a Division Bench judgment in Chaubey Sushil Chandra Vs. Raj Bahadur, and a Single Bench decision in Aisha v. State of Jammu and Kashmir A. I. R. 1978 J. & K. 34. Reference has also been made by the learned counsel to a Division Bench judgment of this Court in Roop Chand Chaudhri v. Smt. Ranjit Kumari (1990) 98 L. R. 384 .

3. The contention of learned counsel for the respondent, on the other hand, is that the cause of action in the unamended suit as also in the proposed amendment was the same and only the form of the suit was sought to be changed. Reliance was placed on Hem Raj Sharma and Sons and Another Vs. Madan Lal Chaman Lal, in which S. S. Sodhi. J., following an earlier decision of this Court in M/s Bishan Sarup and Brs. v. Smt. Tara Wanti 1973 R L. R. 780 held that the amendment allowed by the Court below called for no interference. The learned Judge referred to both Chaubey Sushil Chandra Vs. Raj Bahadur, as well as AIR 1978 J. & K. 34 which have been relied upon by the learned counsel for the petitioners and expressed the view that he preferred to follow the earlier decision of this Court in M/s Bishan Samp's case (supra). It may be added here that the decision in Roop Chand Chaudhri's case (supra) related to a suit in which initially the prayer was for refund of advance and an equal sum by way of damages and interest on account of alleged breach of agreement of sale within the specified time and by amendment the plaintiff sought to add the relief of specific performance. The view taken by the Division Bench of this Court was that by filing a suit for the recovery of advance and damages, the plaintiff had clearly chosen one of the alternatives and by amendment the other alternative could not be permitted to be pleaded by him. The decision is thus clearly distinguishable from the facts of the case in hand.

4. In my view, the crucial question on which the decision of this revision petition turns is whether as a result of amendment the plaintiff wanted to set up a new case or a new cause of action or he merely wanted to add a different or additional approach to the same facts. In A.K. Gupta and Sons Vs. Damodar Valley Corporation, the Supreme Court while dealing with the scope of Order 6, Rule 17 observed :-

"In the matter of allowing amendment of pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred where however the

amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation."

They further observed :-

"The expression cause of action in this context does not mean every fact which is material to be proved to entitle the plaintiff to succeed. The expression only means a new claim made on a new basis constituted by new facts. The words new case means new set of ideas. Thus no amendment will be allowed to introduce new set of ideas to the prejudice of any right acquired by any party by lapse of time."

5. It cannot be disputed that the bundle of facts which together constitute cause of action remained exactly the same and what was sought to be added by way of amendment was that instead of asking of a decree for rendition of accounts and payment of amount found to be due, the plaintiff specified a certain amount on the same facts which was due to him. In my view, this was merely a different or additional approach to the same facts.

6. The matter can be seen from another angle. Order 6, Rule 17 consists of two parts. The first part empowers the Court at any stage of the proceedings to allow either party to alter or amend his pleadings as may be just. The second part enjoins on the Court to allow all such amendments, as may be necessary, for the purpose of determining the real question in controversy between the parties. Forgetting for the time being nice technicalities of law; let us pose the question as to what was the real controversy between the parties. It was that the plaintiff claimed some money as due to him under an arrangement entered into between the parties. Various rules of procedure have been devised in order to do substantial justice between the parties. Rules cannot be used to thwart justice between the parties. Whenever the Court is confronted with a situation, it has to make a choice between one course of action or the other then subject to certain mandatory provisions of law, the Court is required to lean in favour of the course of action which would further the ends of justice. From this angle as well, the order passed by the learned Additional District Judge is unexceptionable.

7. For the foregoing reasons, I find no merit in the, revision petition which is accordingly dismissed. The parties through their counsel are directed to appear in the lower appellate Court for further proceedings according to law on 3-12-1991.