

(2011) 01 P&H CK 0366

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7368 of 2009 (O and M)

Kali Ram Diwan Chand, Commission Agent

APPELLANT

Vs

Ambala Foods Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

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

Citation : (2011) 01 P&H CK 0366

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 4.11.2009, Annexure P3, passed by learned Additional Civil Judge, Senior Division, Guhla, and for allowing the application filed by Petitioner for amendment of the plaint.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully, including the impugned order passed by learned trial Court.

3. Brief facts relevant for the decision of present revision petition are that the Petitioner-Plaintiff filed a suit for recovery of Rs. 1,40,107/-against Respondents on the ground that Petitioner deals in business of sale and purchase and commission agency in Food Grain. Respondent No. 1 purchased wheat from the Petitioner on various dates. Respondent No. 1 made some payments against wheat purchased and however, did not make full payment. After adjustment, a sum of Rs. 85,203.94 is still due from the Respondents. The suit was contested by Respondent-Defendants. Issues were framed on 9.7.2007. Thereafter an application was filed on behalf of the Petitioner for amendment of plaint incorporating a new para for taking the plea that Respondent -Defendants in their income tax returns have shown the amount payable by them to the Plaintiff in their accounts and the same amounts to acknowledgement of liability and

fresh period of limitation starts from such acknowledgement.

4. The application was contested by Respondent-Defendants on the ground that the same has been filed with a mala fide intention and that, in fact, plea was already taken by them in the written statement that claim is time-barred as even as per averment of Petitioner-Plaintiff, date of last purchase is 30.9.2000 and date of last payment is 2.3.2001 and hence, suit has been filed after requisite period of limitation.

5. Learned trial court dismissed the application filed by Petitioner Plaintiff by observing as under:

The applicant wants to amend plaint by inserting facts of income tax return of year 2001-02, 2002-03 and 2003-04 and in income tax return amount of the purchase, made on credit by the Defendants from the Plaintiff and has shown Rs. 85,203.94 paise as the price of goods purchased by the Defendants by the Plaintiff. The applicant has not placed on record any such document. The perusal of the file shows that issues were framed on 9.6.2007 and the applicant/Plaintiff has not led any evidence and trial has already commenced. In Sukhdev Singh v. Bal Kishan 2005(1) RCR 459 it was held that the stage of amendment is only before commencement of trial. No application for amendment is to be entertained after commencement of the trial unless the court comes to a conclusion that by due diligence the party seeking amendment could not have raised the matter before the commencement of the trial. If the fact was in the knowledge of the party at the time of trial that cannot be incorporated by amendment at the time stage of the suit.

6. It has been contended by learned Counsel for the Petitioner-Plaintiff that after framing of issues, it cannot be said that trial has commenced and that trial is deemed to commence when affidavit in lieu of examination-in-chief of any witness of Plaintiff is filed. He has also placed reliance upon Vidyabai and Ors. v. Padmalatha and Anr. 2009(1) RCR 763. However, perusal of the said judgment shows that in case after framing of issues, affidavit in lieu of examination-in-chief of a witness is filed, the same amounts to commencement of proceedings.

7. However, in the present case, after framing of issues, several dates were fixed for evidence of Petitioner-Plaintiff and however, no evidence was adduced by it and rather the present application has been filed. Hence, it cannot be said that when after framing of issues, several opportunities were availed by Petitioner-Plaintiff to adduce evidence, the trial has not commenced for the purpose of proviso to Order VI Rule 17 of the CPC (hereinafter to be referred to as the 'Code').

8. Law is well settled that no application for amendment is to be entertained after commencement of trial, in view of amended provision of Order VI Rule 17 of the Code, unless the Court comes to the conclusion that by due diligence, the party seeking amendment could not have raised the matter before the commencement of trial and if the fact was in the knowledge of the party at the

time of trial, that cannot be incorporated by amendment of plaint.

9. In the present case, a careful perusal of plaint filed by Petitioner-Plaintiff shows that it has been specifically mentioned that the last date of purchase was 30.9.2000 and the last date of payment was 2.3.2001. In para 13 of the plaint, it has been mentioned that cause of action for this suit has arisen to the Plaintiff for the various dates mentioned in the plaint and hence, the Court has jurisdiction to entertain the suit. No specific plea regarding the alleged extension of period of limitation has been taken in the original plaint. Plea was taken by the Respondent-Defendants in the written statement that the suit is not within limitation. However, even then no application for amendment was filed on behalf of the Petitioner Plaintiff. Issues were framed and after availing several opportunities for evidence, the present application was filed and hence, there is force in the argument of learned Counsel for the Respondent-Defendants that after framing of issues, several opportunities have been availed by Petitioner-Plaintiff to adduce evidence and hence, merely on the ground that it failed to adduce the evidence, it cannot be said that the trial has not commenced.

10. Law is well settled in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004(1) RCR 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby.

11. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order and that grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

12. Hence, the present revision petition is hereby dismissed being devoid of any merit.

13. However, it is made clear that nothing observed in this order shall be construed to have any bearing on the decision of this case on merit by learned trial Court.