(1988) 08 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1272 of 1988

Kulwinder Singh APPELLANT

Vs

Pindi Paints Corporation, Patiala and Another RESPONDENT

Date of Decision : 24-08-1988

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

Citation : AIR 1989 P&H 125 : (1989) 1 ILR (P&H) 77

Hon'ble Judges : Jai Singh Sekhon, J

Bench : Single Bench

Advocate : M.S. Kang, for the Appellant; V.G. Dogra, for the Respondent

Final Decision : Allowed

Judgement

Jai Singh Sekhon, J.—The plaimiff has directed this revision petition against the order dt. 9th May, 1988 of the learned Senior Subordinate Judge, Patiala, dismissing his application for amendment of the plaint in order to arraign all the partners of firm-defendant No. 1 as parties, besides depicting Jagdish Ram, defendant No. 2, as the Manager of the defendant-firm.

2. In brief, the facts are that Kulwinder Singh, plaintiff filed a suit for recovery of Rs. 10.000/- as the principal amount and Rs. 1000/- as interest against M/s Piridi Paints Corporation of Patiala through its Manager ifagdish Ram, defendant No. 2, contending that the defendant had borrowed an amount of Rs. 10,000/- on 18th Mar. 1985 on the basis of pronote undertaking to pay interest at the tate of Rs. 1.50% P.M., but the defendant /failed to pay the amount despite''repeated requests for its return, which resulted in filing the suit The plaintiff sought amendment of the plaint through application dt 16th Dec. 198 / in order to add all the partners of the fintn as defendants, besides; to incorporate that the loan was taken by Jagdish Rai on behalf of the defendant-firm in the capacity of being its Manager. It was further maintained that the proposed amendment would not change the nature of the suit. This application was resisted by the defendants contending that it would change the nature of the suit and would amount to

introducing a new cause of action as it has been filed at a belated stage.

3. The learned Senior1 Subordinate Judge dismissed this application by holding that the amendment if allowed would amount to taking away the valuable right accrued in favour of the defendant-firm. Reliance in this regard Was placed on the findings of this Court in Ikbal Begum Vs. Akhtar Ali, There is considerable force in the contention of Mr. M. S. Kang, learned counsel for the petitioner that the application for amendment having been filed well within three years of the date of the advancing money, it cannot be said that any valuable right had accrued in favour of the defendant-firm by expiry of the period of limitation, as admittedly the amount was advanced on the basis of pronote dt. 18th Mar. 1985 and the application for amendment was filed on 16th Dec. 1987. There is no dispute that a partnership-firm is not a juristic person and it had to be sued by impleading all its partners. The provisions of R. 3 of O. 30 of the Civil P.C, prescribe the mode of service upon a firm and I fail to understand in which context the trial Court had referred to these provisions, besides holding that with the passage of time a valuable right has accrued in favour of the defendant-firm. The findings of this Court in Smt. Ikbal Begum''s case (supra), relied upon by the trial Court are not attracted to the facts of the case in hand as in that case through the propose amendment of the written statement, the defendant had tried to set up altogether a different case from the original written statement where she admitted the transaction of the sale, but her position was that the plaintiff knew as he was purchasing the land, there was no deficiency in the area. In the proposed amendment she wanted to take a complete somersault by contending to plead that the entire transaction was a bogus one and no consideration passed between the parties, inasmuch as that she was duped by the plaintiff who was her jmukhtiar-e-am. Under these circumstances, it was held that such amendment could not be allowed, as it amounted to wholly displacing the case of the plaintiff and introducing a totally different new and inconsistent case.

4. On the other hand, in the present case, the perusal of the copy of the plaint furnished by the learned counsel for the defendants shows that the firm M/s Pindi Paints Corporation, defendant No. 1 was sued through its manager Jagdish Rai, besides him as defendant No. 2, whereas in the body of the plaint it was simply mentioned that the defendant had taken loan on the basis of the above referred pronote, No doubt, the plaint having been loosely drafted, it is not specifically mentioned that the loan was taken by the firm through its Manager, Shri Jagdish Rai, but the plaint when read as a whole clearly reveals by implication that the loan was advanced to the firm through its manager Jagdish Rai as in that case only the Manager of the firm would have been arraigned as defendant No. 2, Thus, both the proposed amendments regarding the arraying him the partners of the firm and depicting that the loan having been advanced through Jagdish Rai, Manager of the firm would not amount to introducing new cause of action or displacing the case of the defendants altogether.

5. The findings of G. C. Mital, J. in Ashok Rana v. Rakesh Kumar (1985) 87 PLR 483, are also not attracted to the facts of the case in hand, as in that case the controversy involved the amendment of the plaint in order to incorporate facts disclosing in what capacity the plaintiff would be entitled to a decree for preemption and the amendment application was filed after the expiry of the period: of limitation. Under these circumstances, it was held that such amendment cannot be allowed because it will take away a valuable right which had accrued in favour of the vendees. The findings of J. V. Gupta, J. of this Court in Dalip v. Daria 1986 89 P LR 374, are also not attracted to the case in hand, as in that case the plaintiff in the original plaint had alleged the defendant having borrowed in cash a sum of Rs. 3300/- on 15th Jan. 1981 and executed an entry to this effect in the bahi, but subsequently affixed his thumb- impression under it, but through the amendment it was sought to be pleaded that in spite of making payment in cash on ,15th Jan. 1981, it should be incorporated that the defendant thumb marked the entry as a balance of Rs. 3300/- which was struck on that date and no payment in cash was made to the defendant as alleged earlier. Under these circumstances, the order of the trial Court dismissing the application for amendment of the plaint was upheld by holding that it will altogether change the nature of the case and taking away a valuable right which had accrued in favour of the defendant.

6. For the foregoing reasons, the impugned order of the trial Court being not legally sustainable is set aside by accepting this revision petition, of course, subject to the qualification that the plaintiff shall pay Rs. 500/- as costs for this lapse, to defendant No. 1 before the trial Court on or before 23rd Sept. 1988 and the trial Court shall allow him to amend the plaint as indicated above. There is, however, no order as to costs in this revision petition.

