

**(2013) 05 SHI CK 0074**  
**In the High Court Of Himachal Pradesh**  
**Case No : CMPMO No. 38 of 2013**

Smt. Urmil Verma

APPELLANT

Vs

Smt. Veena Sharma and Another

RESPONDENT

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**Date of Decision :** 29-05-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151  
Constitution of India, 1950 — Article 227  
Specific Relief Act, 1963 — Section 38, 39, 40

**Citation :** (2013) 05 SHI CK 0074

**Hon'ble Judges :** Kuldip Singh, J

**Bench :** Single Bench

**Advocate :** Inder Dutt, Vice Mr. Anoop Rattan, for the Appellant; M.C. Sharma, Advocate for Respondent No. 1 and Mr. Hamender Chandel, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Kuldip Singh, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 8.1.2013 passed by the learned Civil Judge (Junior Division), Court No. 5 Shimla, rejecting application of the petitioner under Order 6 Rule 17 read with Section 151 C.P.C. It has been stated that petitioner has filed a suit for injunction against the respondents. The suit was at the stage of petitioner's evidence, when application under Order 6 Rule 17 C.P.C. was moved for amendment of plaint for incorporating the relief of damages to the extent of Rs. 2,50,000/- alongwith interest at the rate of 12% per annum alongwith necessary pleadings in the body of the plaint. The application was contested by the respondents and the learned trial Court dismissed the application on 8.1.2013. Heard. It is admitted case of the parties that the petitioner has filed a suit for injunction against the respondents. The Court after framing issues, fixed the suit for evidence of the plaintiff. At that stage, the petitioner moved an application under Order 6 Rules 17 read with Section 151 C.P.C. for incorporating the relief of damages to the extent of Rs. 2,50,000/-

alongwith interest, though, according to the petitioner, she suffered damages to the tune of Rs. 4,22,100/-. The learned trial Court has rejected the application on the ground that the application has not been moved u/s 40 of the Specific Relief Act, 1963 (for short Act) and the application has been moved only under Order 6 Rule 17 read with Section 151 C.P.C. Section 40 of the Act is as follows:-

40. Damages in lieu of, or in addition to, injunction.-

(1) The plaintiff in a suit for perpetual injunction u/s 38, or mandatory injunction u/s 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach

2. The proviso to sub-section (2) of Section 40 provides that where no damages has been claimed in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim. Section 40 is substantive provision whereas procedure for amendment is provided under Order 6 Rule 17 C.P.C. It has been submitted by learned counsel for respondent No. 1 that Section 40 of the Act has not been referred in the application moved by the petitioner. The law is not to be pleaded in the pleadings, only facts are required to be pleaded. The suit is for injunction and the petitioner intends to incorporate the damages in the suit by way of amendment, which is permissible u/s 40 of the Act. There is no absolute bar of amendment of pleadings under Order 6 Rule 17 C.P.C. after particular stage of the suit. The implication of Section 40 of the Act has not been properly considered. The Court below has wrongly dismissed the application and, therefore, impugned order is not sustainable. In view of the above, the petition is allowed and order dated 8.1.2013 passed by the learned trial Court is set aside. The application under Order 6 Rule 17 read with Section 151 C.P.C. moved by the petitioner, is allowed. The petition stands disposed of, so also the pending application(s), if any. Interim order, if any, stands vacated.