



CR-6806-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR-6806-2025 (O&M)
Decided on :- 24.09.2025**

M/s Goraya Commission and Another ...Petitioners

VERSUS

M/s Sukhraj AgroRespondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Divyadeep Walia, Advocate for the petitioners.

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MANDEEP PANNU J.

1. The present civil revision under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 25.07.2025 passed by the learned Civil Judge (Junior Division), Batala, whereby the application dated 04.07.2025 filed by the petitioner under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure and Section 151 CPC was dismissed.

Brief Facts

2. The facts as emerge from the record are that the plaintiff/petitioner instituted a suit for recovery against M/s Sukhraj Agro, Shop No. 61, New Green Market, Batala, through its authorised signatory, Shri Rajinder Singh. In the plaint it was alleged that the defendant firm is a concern in which Rajinder Singh was managing and controlling the affairs. The written statement, however, specifically averred that the son of Rajinder Singh, namely Sukhraj Singh, is the sole proprietor of M/s Sukhraj Agro and that Rajinder Singh was not the proprietor of that firm though he admittedly runs M/s Rajinder Trading Company. Issues were framed



and the matter proceeded to trial. An application for framing of an additional issue on the question of non-joinder of necessary parties was filed and dismissed.

3. Thereafter an application dated 24.02.2025 under Order I Rule 10 and Order VI Rule 17 CPC was filed. That application was recorded as having been withdrawn on 04.07.2025, the record bearing a statement by counsel for the plaintiff that the application suffered from a technical defect. The earlier order records the withdrawal but does not contain any express order either granting or refusing liberty to file a fresh application. On the same date i.e. on 04.07.2025 a fresh application was filed by the plaintiff under Order I Rule 10 read with Order VI Rule 17 and Section 151 CPC seeking to amend the plaint by specifically adding the name of Sukhraj Singh as defendant No.2 and by stating that “defendant No.1 is a sole proprietorship concern and defendant No.2 is the sole proprietor of defendant No.1.” The learned trial court, after hearing the parties, dismissed the fresh application vide order dated 25.07.2025. The reasons recorded by the trial court are that an earlier similar application had been filed and withdrawn and no express liberty to file a fresh application was shown on record. The plaintiff had already led its evidence on the same array of parties and that allowing the amendment at the stage of defendant’s evidence would complicate the proceedings, cause multiplicity of applications, possibly necessitate further affidavits and leading of fresh evidence and would therefore prejudice the defendant. Further, the trial court observed that the plaintiff had not shown due diligence.

Submission of learned counsel for the petitioner

4. Learned counsel for the petitioner before this Court contends that the impugned order is illegal and perverse. It is submitted that the omission to name



the actual proprietor, namely Sukhraj Singh, in the plaint was a bona fide inadvertent/typographical error which does not alter the cause of action and that the proposed amendment is formal in nature. Reliance is placed upon the power of the Court under Order I Rule 10 and Order VI Rule 17 CPC to add necessary parties and to allow amendments at any stage so as to facilitate effective adjudication. It is also contended that refusal to allow the amendment would result in failure of justice because the decree, when passed, may not be executable against the correct person. It is further submitted that the plaintiff acted with due diligence in filing the earlier application and in promptly filing the corrected application and that the identity of the proprietor sought to be impleaded is admitted in the defendant's written statement and therefore no new cause of action or surprise would be occasioned by the amendment. It is further the contention that the apprehension of multiplicity of proceedings or prejudice to the defendant is speculative and not established on record. Learned counsel for the petitioner, on instructions, further submits that the petitioner undertakes not to lead any evidence, if the application filed by him under Order I Rule 10 read with Order VI Rule 17 CPC and Section 151 CPC, is allowed.

Findings

5. I have considered the submissions of the learned counsel for the petitioner and examined the record. Two questions require determination: first, whether the second (fresh) application dated 04.07.2025 was maintainable in view of the earlier application having been withdrawn on the same very date i.e. 04.07.2025; and second, whether the amendment sought, namely, to implead Sukhraj Singh as the sole proprietor of M/s Sukhraj Agro and to make a



consequential deposition in the plaint is necessary for proper adjudication and should be permitted at this stage.

6. On the first question, the record clearly discloses that the earlier application was recorded as withdrawn on 04.07.2025. There is no express order on record granting liberty to file a fresh application. The absence of any such express grant meant that the trial court did not expressly sanction refiling at that juncture. Withdrawal of an application ordinarily marks an abandonment of that particular attempt. However, withdrawal simpliciter does not operate as an adjudication on the merits nor does it ipso facto create an absolute bar to filing a corrected application. Courts possess discretion under the Code to entertain a fresh application notwithstanding earlier withdrawal, subject to equitable considerations such as the stage of the proceedings, delay, diligence of the applicant and prejudice to the opposite party. In the present matter it is relevant that the purported defect sought to be cured by amendment concerns the correct identification of the person who is the sole proprietor of the defendant firm and that this factual position is not in dispute. The written statement itself admits that Sukhraj Singh is the sole proprietor of M/s Sukhraj Agro. Moreover, the fresh application was filed promptly on the same date as the withdrawal, that is, the corrected application was not an afterthought filed after substantial delay but an immediate attempt to cure a stated technical defect. In these circumstances, the mere absence of an express recorded liberty to file a fresh application cannot be permitted to operate as an absolute bar so as to defeat the substantive right to have the controversy adjudicated on merits; to hold otherwise would elevate form over substance and risk injustice.



7. On the second question, Order I Rule 10 CPC empowers the Court to add any party whose presence before the Court is necessary in order to enable it to effectively and completely adjudicate upon and settle all questions involved in the suit. Order VI Rule 17 CPC mandates that amendments which are necessary for determining the real question in controversy ought to be allowed, unless the amendment would cause injustice to the opposite party which cannot be compensated by costs or other terms. The amendment proposed by the plaintiff is limited and formal as it seeks to name the actual sole proprietor already identified in the written statement and to record the relationship between the firm and its sole proprietor. The proposed amendment does not alter the cause of action. It does not introduce any new claim nor seek to convert the character of the suit. Permitting the amendment will facilitate effective adjudication and ensure that any decree passed is executable against the correct legal entity/person. As to the trial court's concern that allowing the amendment at the stage of defendant's evidence would lead to multiplicity, additional affidavits and re-opening of evidence, the apprehension, while understandable, is not of such a character as to justify refusal where no real prejudice is shown. This is particularly so, when the learned counsel for the petitioner stated that the petitioner undertakes not to lead any evidence, if the application filed by him under Order I Rule 10 read with Order VI Rule 17 CPC and Section 151 CPC, is allowed.

8. For these reasons, and having regard to the object of the provisions permitting amendment, namely, to enable the Court to determine the real questions in controversy between the parties, this Court is satisfied that the fresh application filed on 04.07.2025 was maintainable notwithstanding that the earlier application had been withdrawn and no express liberty to re-file is recorded. Further, this



Court is satisfied that the amendment sought is necessary for proper adjudication and is formal in nature, and that refusal to allow the same would occasion prejudice to the plaintiff and result in a possible failure of justice.

Conclusion

9. Accordingly, the impugned order dated 25.07.2025 is set aside to the extent that it dismissed the application dated 04.07.2025. The present revision petition is allowed. The application under Order I Rule 10 read with Order VI Rule 17 CPC and Section 151 CPC filed by the plaintiff on 04.07.2025 is allowed subject to the payment of costs of Rs.5000/- to be paid by the petitioners to the respondent before the learned trial Court.

10. Pending application(s), if any, also stand disposed of.

September 24, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No