



CR-1498-2025 (O&amp;M)

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

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CR-1498-2025 (O&amp;M)

Date of Decision : 08.05.2025

M/s Galaxy Logistic Service

... Petitioner

Versus

M/s Trim India Pvt. Ltd.

.... Respondent

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Saksham Mahajan, Advocate for the petitioner.

Mr. Ivan Singh Khosa, Advocate for the respondent.

**SUVIR SEHGAL J.****CM-9124-CII-2025**

1. For the reasons given in the application, it is allowed.
2. Annexures P-13 and P-14 are taken on record.

**Main case.**

3. Assailing order dated 10.02.2025, Annexure P-12, passed by the learned Civil Judge (Junior Division), Gurugram, whereby an application, Annexure P-10, filed by respondent-plaintiff for amendment of the plaint has been accepted, petitioner-defendant has approached this Court by way of instant revision petition.
4. Mr. Saksham Mahajan, counsel for the petitioner submits that the respondent-plaintiff filed a suit for recovery along with interest, which is being contested by the petitioner-defendant. He states that by



virtue of order dated 13.07.2022, Annexure P-3, plaintiff was permitted to amend the suit to claim recovery of Rs.1,73,74,696/- on the basis of some debit notes claimed to have been issued by the defendant. Counsel states that plaintiff examined Dinesh Kumar in evidence, who tendered his affidavit, Annexure P-13 and in his cross-examination, he made certain admissions. Counsel asserts that in order to wriggle out of them, after the closure of evidence, an application, Annexure P-10 was filed for the amendment of the plaint, which has been accepted vide order impugned herein. Making a reference to proviso to Order 6 Rule 17 CPC, counsel contends that after the commencement of the trial, plaintiff cannot be permitted to amend the suit unless he is able to show due diligence. It is his case that the plaintiff has failed to show any due diligence nor has the trial Court adverted to the mandatory provision while accepting the application. He has placed reliance upon :-

- (i) **Basavaraj Versus Indira and others, (2024)3 SCC 705;**
- (ii) **Mohinder Kumar Mehra Versus Roop Rani Mehra and others, (2018) 2 SCC 132;** and
- (iii) **Sukhdev Singh Versus Dharam Pal Gupta, 2019(2) RCR (Rent) 504.**

5. While supporting the impugned order, Mr. Khosa, counsel for the respondent has made a reference to the pleadings and submits that no new case is being set up by the plaintiff in the amended plaint. He asserts that the plaintiff has specifically pleaded that he has exercised due diligence, but could not seek the amendment of the plaint earlier. Strength has been drawn by him from the judgment of the Supreme Court



in:-

- (i) *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited and another, (2022) 16 SCC 1;*
- (ii) *Sushil Kumar Jain Versus Manoj Kumar and another, (2009) 14 SCC 38.*

6. I have heard counsel for the parties and considered their respective submissions besides examining the documents appended with the paper book.

7. Plaintiff filed a suit for recovery against the defendant, which was amended on an application, Annexure P-2, filed by him and the amount sought to be recovered was enhanced. Suit is being contested by defendant by filing a written statement wherein the material averments made in the plaint were denied. After the framing of the issues on 18.07.2023, plaintiff led its evidence, which was closed on 27.08.2024 Annexure P-7. After the defendant had examined one witness, plaintiff filed an application for the amendment of the plaint, which has been accepted vide order impugned herein.

8. Interpreting Order 6 Rule 17 CPC, as amended by Act No. 22 of 2002, Supreme Court in *Mohinder Kumar Mehra's* case (supra) held that although this provision permits amendment in the pleadings at any stage of the proceedings but a limitation has been engrafted by means of proviso to the effect that no application for amendment shall be allowed after the trial has commenced. The object for adding proviso is to curtail delay and expedite adjudication of the cases. Declining amendment subsequent to commencement of the trial is with the object



that when evidence is led on pleadings, no new case be allowed to be set up by way of an amendment. The proviso, however, contains an exception by reserving court's jurisdiction to permit a party to amend pleadings on being satisfied that in spite of due diligence a party could not have raised the matter before the commencement of the trial. In **Basavaraj's** case supra, Supreme Court held that an amendment of plaint is not a matter of right and burden is on the party seeking amendment after the commencement of the trial to show that in spite of due diligence, such amendment could not be brought about earlier. Plea of oversight cannot be accepted as a ground to permit amendment in the pleadings when facts were to the knowledge of the parties.

9. A perusal of the application, Annexure P-10, filed by the plaintiff shows that it has failed to explain the due diligence. The sole averment made in the application regarding its being vigilant is *"that the plaintiff has been diligently contesting the matter, however, despite of due diligence the plaintiff could not seek the amendment of the plaint earlier."* Except for this vague averment in the application, plaintiff could not explain as to how he has been alert through out. Proviso to Order 6 Rule 17, CPC is couched in a mandatory language and till the time the condition laid down therein is not fulfilled, plaintiff cannot be permitted to amend the plaint. Not only this, even the trial Court while accepting the prayer and permitting the plaintiff to alter the plaint has not adverted to this provision of the Code of Civil Procedure.

10. Judgment in **Sanjeev Builders's** case (supra) relied upon by counsel for the respondent would not advance his case. He could not



point out that the proviso Order 6 Rule 17 CPC was under consideration before the Supreme Court. The judgment in *Sushil Kumar Jain's* case (supra) would also not come to the assistance of the plaintiff as the amendment had been sought prior to the framing of the issues by the trial Court. Although wide power has been vested in the Court to permit the emendment, but the same has to be exercised within the four corners of the statutory provision. This Court is, therefore, of the view that the trial Court has committed serious irregularity and illegality in exercise of its jurisdiction. Impugned order therefore, cannot be sustained.

11. Accordingly, revision petition is allowed. Impugned order dated 10.02.2025, Annexure P-12, is set aside and application for amendment, Annexure P-10, filed by the plaintiff is dismissed with no order as to costs.

08.05.2025  
pooja saini

(SUVIR SEHGAL)  
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No