

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

CR-5tfgv-2024

Reserved on : 05.02.2025

Pronounced on : 01.03.2025

M/s Kisco Castings (India) Limited

..... Petitioner

Versus

M/s Sunder Steel Products and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

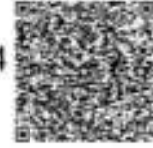
Present : Mr. Gaurav Datta, Advocate
for the petitioner.

Mr. Rakesh Chopra, Advocates
for the respondents.

VIKRAM AGGARWAL, J

By way of the instant revision petition, the petitioner defendant (M/s Kisco Castings (India) Limited) (hereinafter referred to as 'the petitioner-defendant') assails the order dated 13.02.2024 (Annexure P-8), passed by the court of learned Civil Judge (Junior Division), Amloh, District Fatehgarh Sahib, vide which the application filed by the respondents-plaintiffs M/s Sunder Steel Products and Sunder Pal Goyal, partner of M/s Sunder Steel Products (hereinafter referred to as 'the respondents-plaintiffs') for amendment of the plaint was allowed.

2(i). The facts, as emanating from the revision petition, are that a suit for recovery of ₹22,63,276 (Annexure P-1) was instituted by the respondents-plaintiffs against the petitioner-defendant stating the amount to be



outstanding as balance price of material purchased by the petitioner-defendant from the respondents-plaintiffs. The suit was opposed by the petitioner-defendant by way of written statement (Annexure P-2). A suit for recovery had also been initiated by the petitioner-defendant against the respondents-plaintiffs (Annexure P-3) which had been opposed by the respondents-plaintiffs by way of written statement (Annexure P-4).

2(ii). During the pendency of the present suit, the respondents-plaintiffs preferred an application under Order 6 Rule 17 CPC (Annexure P-5), seeking amendment of the plaint. Amendment was sought in the heading and paragraphs 1, 3, 9, 12 as also in the prayer. The said application was opposed by way of a reply (Annexure P-7) in which it was stated that the persons sought to be impleaded as defendants vide the amendment were not in fact partners of the petitioner-defendant and time barred claims were being sought to be introduced by way of the proposed amendments.

2(iii) The application for amendment was allowed vide order dated 13.02.2024, leading to the filing of the present revision petition.

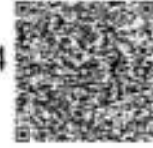
3. Learned counsel for the parties were heard.

4(i). Mr. Gaurav Datta, learned counsel representing the petitioner-defendant vehemently submitted that the impugned order is not sustainable, for, it permitted introduction of time barred claims in the plaint and that the persons now sought to be impleaded as defendants were in fact never the partners of the firm. Learned counsel referred to the original plaint, the written statement, the amendments sought to be made as depicted in the application for amendment, reply filed thereto and the impugned order and submitted that the impugned order deserves to be set aside.



4(ii). It was also submitted that as per Section 12-A of the Commercial Courts Act, 2015, efforts for settlement by way of mediation are mandatory and by allowing the amendment, the said provision had been bypassed. In support of his contentions, learned counsel placed reliance upon the judgments of Supreme Court of India in ***South Konkan Distilleries and another versus Prabhakar Gajanan Naik (2008) 14 Supreme Court Cases 632, Basavaraj versus Indira and others 2024 (4) RCR (Civil) 115, Khatri Hotels Private Limited and another versus Union of India and another (2011) 9 Supreme Court Cases 126 and Dahiben versus Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and others (2020) 7 Supreme Court Cases 366.***

5. On the other hand, Sh. Rakesh Chopra, learned counsel representing the respondents- plaintiffs submitted, with equal vehemence, that the impugned order is perfectly legal and valid and, therefore does not call for any interference. Reference by Sh. Rakesh Chopra was also made to the original plaint, the written statement, the application for amendment and the reply there to. As regards impleading new parties and the question of limitation, it was submitted that all these shall be decided once the suit is tried and the amendments, do not, in any manner, change the nature of the suit. He submitted that in fact if these amendments were not sought in this suit, an objection under Order 2 Rule 2 CPC would have been taken. Subsequently, in support of his contentions, learned counsel placed reliance upon the judgments of Supreme Court of India in ***Ragu Thilak D.John versus S.Rayappan 2001 AIR (Supreme Court) 699 and S. Natarajan versus Sama Dharman 2015 (2) RCR (Criminal) 854;*** judgments of

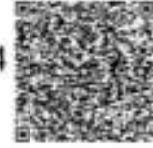


Bombay High Court in *Dinesh B.Chokshi versus Rahul Vasudeo Bhatt 2013 (2) RCR (Criminal) 728 and Manohar s/o Mahadeorao Satpute versus Prabhakar s/o Ramdasji Amaratkar 2018 (2) DCR 417*; judgments of Madras High Court in *A.R.M.Nizmathuallah versus Vaduganathan 2008 (1) RCR (Criminal) 181, Joy Mon versus C.Sasit Lovely 2013 (5) RCR (Civil) 560 and M/s IOCEE Exports Ltd., 4E Century Plaza, 560-562, Mount Road, Teynampet, Chennai-600018 versus Mr. Moosa Ahmed (deased), Mr. Mohammed Abdul Majid and others 2020 (5) CTC 769* and the judgments of Coordinate Benches of this Court in *Sultan Singh versus Tej Partap 2022 (1) RCR (Criminal) 712, Saroop Singh versus Rattan Singh (dead) through LRs 2015 (4) RCR (Civil) 825*.

6. I have considered the submissions made by learned counsel for the parties.

7(i). Before advertng to the merits of the case, let us examine the law on the subject. In *Revajeetu Builders & Developers versus Narayanaswamy & Sons & Others 2009 (10) SCC 84*, the Supreme Court of India examined the entire law on amendment of pleadings starting from the decision of the privy council in *Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 Privy Council 249* wherein it was observed as under:-

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."



A perusal of the aforesaid observations of the privy council as far back as in 1922 would show that it is the same law which is holding the field even today. It is not in doubt that powers of amendment should be exercised liberally but by means of the amendment, the nature and subject matter should not change. The Supreme Court then examined various judgments rendered by the English Courts, the Supreme Court, the Bombay High Court etc. and certain principles were culled out which ought to be taken into consideration while allowing or rejecting an application for amendment;

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

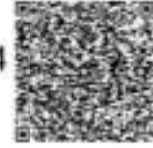
(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ?

(2) Whether the application for amendment is bona fide or mala fide ?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And



(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

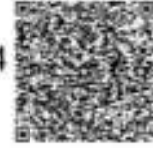
7(ii). The said view of the Supreme Court of India has recently been reiterated in the case of ***Basavaraj versus Indira And Others*** (*supra*) also. In fact, in this case, the Supreme Court held that oversight cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial. Reference can also be made to the judgment of the Supreme Court of India in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited & Anr. 2022 AIR (Supreme Court) 4256*** wherein also, the law as regards amendment of pleadings was summed up;

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and



(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.



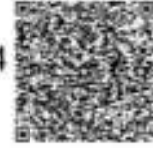
(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder



Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897

7(iii). It is also a settled law that time barred claims cannot be introduced by way of amendments. Reference in this regard can also be made to the judgements of the Supreme Court of India in the cases of ***South Konkan Distilleries and another versus Prabhakar Gajanan Naik and Basavaraj versus Indira and others*** (supra). In ***South Konkan Distilleries and another versus Prabhakar Gajanan Naik's case*** (supra), the Supreme Court of India held as under:-

“14. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.”

7(iv). It was further held that when the issue of limitation is found to be an arguable issue, then an amendment can be allowed and an issue can be framed on the question of limitation and the same shall be decided subsequently;

“21. It was next argued by the learned counsel for the appellants that since it is well settled that the court should be extremely liberal in granting amendment, provided the same was within the period of limitation or there would be an arguable issue with regard to the point of limitation, the Courts below ought to have allowed the amendment of the



written statement and the counterclaim and thereby raised an issue on the question whether the amended claim of the appellants was barred by the law of limitation. In support of this submission, reliance was placed on Pankaja v. Yellappa. There is no quarrel about the proposition of law that was submitted by the learned counsel for the appellants. In any view of the matter in that decision, namely, Pankaja, the question of limitation was found to be arguable issue and on that ground this Court allowed the amendment and the trial court was directed to frame necessary issue on the question of limitation and decide the same keeping in view the law laid down in L.J.Leach case. But in the present case, we are in full agreement with the courts below that there was no dispute on the question of limitation. Therefore, it cannot be said that the point of limitation was an arguable one and the same should be decided by raising an issue at the time of disposal of the suit.”

7(v). In the case of *Basavaraj versus Indira and others* (supra) also, a similar view was taken;

“12.1 In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the



compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.”

7(vi). It is on the touchstone of the principles laid down in the aforesaid judgments that we now proceed to determine as to whether the amendment was rightly allowed or not.

7(vii). Firstly coming to the stage of the suit, it needs to be stated here that the application for amendment of the plaint was moved at the initial stage as evidence of the parties had not commenced. Some dates need to be noticed. The suit was filed on 05.11.2019 and written statement to the same was filed on 06.04.2022. The application under Order 6 Rule 17 CPC was filed on 02.08.2022 i.e. barely four months after the filing of the written statement and much before 03 years from the date of filing of the suit. It cannot, therefore, be said that the application was delayed or had been filed after the trial began or that it had been filed with a view to delay the proceedings.

7(viii). Coming to the amendments, the array of defendants was sought to be amended as some more persons were sought to be impleaded as defendants. Further, in the heading, the interest was quantified and some amendments were sought to be made in the body of the plaint as also in the prayer;

The plaintiffs submits as under:-

1. The plaintiffs want to amend their plaint as under:-

a) In the array of defendants, the plaintiffs shall add as under describing them as defendants No.2 to 5:-



2. M/s Kisco Castings, Guru Ki Nagri, Bhadla Road, Mandi Gobindgarh, Tehsil Amluh, District Fatehgarh Sahib through its partner Kuldeep Goyal.

3. Sh Kuldeep Goyal son of Hans Raj

4 Sh. Abhishek Goyal son of Kuldeep Goyal

5. Sh.Raghav Goyal son of Kuldeep Goyal

All partners of M/s Kisco Castings Guru Ki Nagri, Bhadla Road, Mandi Gobindgarh, Tehsil Amluh, District Fatehgarh Sahib and residents of House No.88, Narotam Nagar, Khanna, District Ludhiana

b) The plaintiff shall substitute the present heading of the plaint by the following heading of the plaint:-

"Suit for recovery of Rs.22,63,276/- the balance price of the material purchased by defendants from the plaintiffs and also for recovery of Rs. 1,62,00,500/- being contractual rate of interest @36% per annum as per bills and invoices of purchase from 1.4.2009 upto 6.4.2022 i.e. this date of filing the suit and also for recovery of pendent-lite interest at the said contractual rate from 6.4.2022 upto the date of decree and further till and actual finalization thereof with all costs, charges of the suit against the defendants jointly and severally."

c) The plaintiff shall add following words in continuation of para No.1 of the plaint:-

"Defendant No 2 has been a partnership concern and defendants No: 3 to 5 have been its partners.

d) The plaintiff shall substitute para No.3 of the plaint by the following paragraph:-

"3. The defendants have been purchasing iron and still defective pipes material from the plaintiff No. 1. The defendants purchased said material vide bill no.86 dated 1.9.2008 for Rs. 10,54,087/-, vide bill No.89 dated 18.09.2008 for Rs.5,87,463/-, vide bill No. 102 dated



7.10.2008 for Rs.912235/- vide bill No.113 dated 19.11.2008 for Rs.10,54,906/-,vide bill No.114 dated 19.11.2008 for Rs. 10,85,607/- and vide bill No.116 dated 25.11.2008 for Rs.11,16,613/- and vide bill No.117 dated 25.11.2008 for Rs.11,37,568/- and after adjusting the part payments made by defendants, Rs. 42,08,479/- remained due from them to the plaintiff which was carried forward as balance due amount in further ledgers and in the year from 1.4.2009 to 31.3.2010 the defendants made part payment towards the said amount of Rs 42,08,479/- and balance amount of Rs 27,18,479/- remained due and ultimately principal suit amount of Rs.22,63,276/- remained due against the defendants as on 3.8.2019 after adjusting cheque No.18316 dated 3.8.2019 issued by defendants in favour of plaintiff No.1 to discharge the liability partially. Details are also given in the succeeding paragraphs.

e) The plaintiff shall add para No.9 (a) as under after existing para No.9 in the plaint:-

9 (a) The transaction detailed in para No.3 above between the parties are and were commercial and the bills of purchase detailed in Para No.3 above contained the contract between the parties to pay interest @ 36% per annum on the amount of the invoice/bill in case the defendants do not pay the amount of the invoice within a week. Even otherwise, as per the custom and usage prevailing in the area of Mandi Gobindgarh, the directors are liable to pay contractual rate of interest. The plaintiffs also claimed said rate of interest on the basis of equity as th defendants by retaining the principal suit amount of Rs.22,63,276/- has gained a lot and on the other hand, the plaintiffs have suffered loss of 36% per annum on the amount of bills/invoices, not



paid by the defendants as per the contract mentioned in the said bills/invoices

f) The plaintiffs shall substitute existing para No. 12 of the plaint by the following paragraph:-

The value of the suit for the purpose of court fee and jurisdiction is fixed at Rs.22,63,276/- for the principal amount and Rs 1,62,00,500/- being the amount of interest @ 36% per annum as per bills and invoices of purchase from 1.4.2009 upto 6.4.2022 i.e. this date of filing the suit, total Rs.1,84,63,776/- and additional court fee of Rs.3,65,300/- is being paid on the plaint as plaintiffs have already paid Rs.55,300/- on the plaint on the principal of sum of Rs 22,63,276/-.

g) The plaintiffs shall substitute the present existing prayer of the plaint by the following prayer and by number the prayer by para No.14:-

"Hence by submitting the plaint, it is prayed that suit for recovery of Rs.22,63,276/- the balance price of the material purchased by defendants from the plaintiffs and also for recovery of Rs 1,62,00,500/- being contractual rate of interest @36% per annum as per bills and invoices of purchase from 1.4.2009 upto 6.4.2022 i.e. this date of filing the suit and also for recovery of pendent-lite interest at the said contractual rate from 6.4.2022 upto the date of decree and further till and actual finalization thereof with all costs, charges of the suit, may kindly be decreed in favour of the plaintiffs and against the defendants jointly and severally"

h) Consequently, the plaintiffs shall mention in existing verification of the plaint following words after words "11 to 13 and Para No. 14."

7(ix). A perusal of the original plaint shows that as regards limitation,



it was stated that the cause of action had arisen from the date of the bills and the last payment made on 03.08.2019. It, therefore, means that after 03.08.2019, since no payment was made, the suit was instituted. The application for amendment was filed on 02.08.2022 i.e. prior to expiry of 03 years from the date of filing of the suit and prior to expiry of 03 years from the last payment as mentioned in the original plaint. Under the circumstances, the amendment sought to be made cannot on the face of it, be said to introduce a time barred claim. At best, it would be an arguable issue which would be decided when the suit is decided by framing an issue, if so required.

7(x). As regards addition of other defendants, projecting them as partners, the same would also be decided when issues are framed after filing of written statement and, it cannot be said that the nature of the suit would change on account of this amendment.

7(xi) As regards Section 12-A of the Commercial Courts Act, 2015, the matter is being tried by the Court of Civil Judge (Junior Division), Amloh and not by the Commercial Court. The said procedure would have been applicable, had the dispute been a commercial dispute being tried by a Commercial Court. If the petitioner terms the dispute to be a commercial dispute and the same falls within the definition of a commercial dispute, the petitioner has its own remedies in law and the said issue cannot be gone into in the present proceedings.

7(xii) I have gone through the judgments relied upon by both sides. In view of the judgments referred to in the preceding paragraphs, detailed reference to the judgments relied upon is not required and the matter shall be



decided in terms of the principles laid down by the Supreme Court of India in the judgments, reference to which has been made in the preceding paragraphs.

7(xiii). The cumulative effect of the aforesaid discussion leads this Court to the conclusion that no illegality or jurisdictional error was committed by the learned trial Court by allowing the application for amendment and, therefore, no interference is warranted.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced on : 01.03.2025

mamta

Whether speaking/reasoned
Whether Reportable

Yes/No

Yes/No