

## Neetu Goel Vs Yogesh Goel

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 12, 2012

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17

**Citation:** (2013) 1 RCR(Civil) 667

**Hon'ble Judges:** A.N. Jindal, J

**Bench:** Single Bench

**Advocate:** Namit Gautam, for the Appellant; Manish Jain, for the Respondent

**Final Decision:** Allowed

### Judgement

A.N. Jindal, J.

The order dated 06.04.2012 (Annexure P-5) passed by the Additional District Judge, Ludhiana, dismissing the application

filed by the petitioner under Order 6 Rule 17 CPC for amendment of the written statement, is under challenge. Learned counsel for the petitioner

states that the proposed amendment in para No. 2 of the preliminary objections, has already been pleaded in para No. 18 of the written statement,

but just to make clarification of the preliminary objections, the petitioner wanted to make necessary amendment in para No. 2 of the preliminary

objections.

2. The adversary contends that the respondent has already filed rejoinder to the written statement and the trial has already commenced, therefore,

the petitioner cannot be allowed to amend her written statement. In support of his contention, he has placed reliance on the judgments delivered by

the Hon"ble Supreme Court in cases Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, and Vidyabai and

Others Vs. Padmalatha and Another,

3. Heard. Both the parties accept that the evidence of the petitioner had already commenced at the time when this application was filed.

4. Record reveals that the proposed amendment would not change the nature of the suit because the fact regarding desertion, sought to be

incorporated by way of amendment, has already been introduced in para No. 18 of the written statement and no further issue shall be required to

be framed after the amendment. However, the defendant wants to further elaborate the said plea by way of amendment.

5. The judgments, relied upon by learned counsel for the respondent in Raj Kumar Gurawara's and Vidyabai's cases (supra) are not applicable to

the facts of the present case.

6. It is not absolute proposition of law that the amendment cannot be allowed even after the trial commences. This Court in case Tejinder Singh

Vs. Surjit Rai and Another, , has held as under:-

7. The rule is divided into two parts. First part speaks for a making amendment liberally at any stage of the proceedings before the trial

commenced. The object of the rule was not to disallow the relief to the plaintiff merely for a technical defect, error or omission made by him in his

pleadings and if he had left anything in the plaint or it unnecessarily took such plea, then he could apply for adding or deleting such pleas by way of

amendment. However, vide Civil Procedure Code, Amendment of 1999, with a view to avoid the delay in adjudication of the issues, the legislature

thought of deleting the provision, however, on account of raising hue and cry by the legal fraternity at large, this rule with amended shape was

brought on the statute book w.e.f. 1.7.2002 by the Act No. 22 of 2002. This amended provision consists of two parts. The first part has been

discussed above, whereas, in the second part, no absolute bar has been created by the statute regarding amendment of the pleadings yet, it

envisaged that no application for amendment shall be allowed after the commencement of the trial. However, if the parties to the proceedings are

able to satisfy the Court that in spite of the due diligence, the party could not raise issue before the commencement of the trial and the Court on

having been satisfied about the explanation submitted before it, could allow the amendment even after the commencement of the trial. The law of

amendment has been very liberal since the very beginning. It envisages that at the time of deciding the application for amendment, the approach of

the Court should be liberal to ensure that substantial justice is not denied. The procedural law is handmaid of the administration of justice, meant to

advance its cause, than to frustrate the same. When the substantial justice and the procedural law come in confrontation with each other, then the

former would prevail over the later. It was observed in case Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, as under:-

rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some

mistake, negligence, inadvertence or even infraction of the rules of the procedure. The Court always gives leave to amend the pleadings of a party,

unless it is satisfied that the party applying was acting mala fide, or that by this blunder, he had caused injury to his opponent which may not be

compensated for by an order of costs. However, negligent or careless may have been the first omission, and however, late the proposed

amendment, the amendment may, be allowed if it can be made without injustice to the other side.

8. Relying on this judgment, the Apex Court in Ganesh Trading Co. Vs. Moji Ram, observed as under:-

Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant

to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the

parties, and to prevent deviations from the course which litigation of particular causes of action must take.

9. Following the dictum of Supreme Court, this Court, in case Sardar Hari Bachan Singh Vs. Major S. Har Bhajan Singh and Another, observed

as under:-

It is well settled law that, however, negligent or careless may have been the first omission and, however, late the proposed amendment, the

amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by

way of costs. A plaintiff may add as new cause of action and the defendant may add a new defence. Even a new case may be allowed to be

introduced. The Court has to take into consideration even subsequent events. A further principle which is also usually considered is that as far as

possible multiplicity of suits should be avoided. Where therefore, the plaintiff sought the permission merely to add a prayer for possession which

did not alter the cause of action or change the essential nature of the suit, and the effect of the refusal of the amendment would have been to deprive

the plaintiff of fresh suit, the amendment should be allowed.

10. No doubt, with a view to curtail the flow of applications after the trial commences, the law left it to the satisfaction of the Courts regarding due

diligence of the parties and the law of amendment envisages that if it is established that despite due diligence, the party could not have raised that

matter before commencement of the trial depending upon the circumstances, the Court is free to order such application.

In the light of the aforesaid judgments, this Court is of the view that since the amendment, sought for, would not change the nature of the petition

before the trial Court, the same could be allowed. However, the delay in filing of the application could be compensated with costs.

Resultantly, this petition is accepted; the impugned order is set aside and the petitioner is permitted to amend her written statement, as sought for,

subject to payment of Rs. 10,000/- as costs.