

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

Civil Revision No.7524 of 2017 (O&M)

Date of decision: May 31, 2018

M/s Jain Packers and another

...Petitioners

Versus

M/s Satyam Industries Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Lakshay Bajaj, Advocate
for the petitioners.

Mr.Akash Sridhar, Advocate for
Mr.Ashwani Talwar, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioners have filed this revision petition against M/s Satyam Industries Pvt. Ltd. and other respondents under Article 227 of the Constitution of India for setting aside the order dated 26.09.2017 passed by learned Civil Judge (Junior Division), Panipat, vide which the application filed by plaintiffs-petitioners under Order 6 Rule 17 CPC for amendment of plaint as well as affidavit of petitioner No.2, was dismissed.

Notice of motion was issued. Learned counsel for respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that plaintiffs-petitioners M/s Jain

Packers through its proprietor and Sanjay Jain, proprietor of M/s Jain Packers filed a suit against M/s Satyam Industries Pvt. Ltd. through its Director and other defendants for recovery of ₹2,20,028/- along with interest. During the pendency of the suit, an application under Order 6 Rule 17 CPC was filed by the plaintiffs for amendment of plaint as well as affidavit of Sanjay Jain. It is stated in the application that applicants/plaintiffs have filed their suit on the basis that plaintiff No.2 is the sole proprietor of plaintiff No.1. Plaintiff No.2 is responsible for every dealing of plaintiff No.1 individually and on behalf of plaintiff No.1. Defendants No.2 and 3 are the Directors of defendant No.1 and they are responsible for every dealing of defendant No.1 individually and on behalf of defendant No.1. It is further plea of the plaintiffs that M/s Jain Packers is HUF firm and Sanjay Jain is the Karta of HUF and he is authorized to do every work on behalf of HUF firm as a Karta but the suit has been filed by Sanjay Jain, as a proprietor of M/s Jain Packers. It is also stated that now the applicants have come to know about this mistake and want to amend the plaint as well as affidavit of Sanjay Jain and also want to amend the plaint in the manner as detailed in the application.

The defendants-respondents appeared and filed reply, wherein, it is stated that if the proposed amendment is allowed, it would change the nature of the suit, nature of the claim of the plaintiffs and would change cause of action also. The suit was instituted on 09.03.2015 and now the amendment is being sought even in the constitution of the plaintiff-firm. Earlier, it was stated that plaintiff No.1 is a proprietorship firm and plaintiff No.2 is its proprietor, now it is being claimed that plaintiff No.1 is an HUF firm with plaintiff No.2 being its Karta.

Learned Civil Judge (Jr. Divn.) Panipat, vide order dated 26.09.2017 dismissed the application by stating that proposed amendment will amount to change of nature of the suit and will cause prejudice to the opposite party and further, these facts were in the knowledge of the applicant-plaintiff and there is no due diligence on the part of the plaintiffs and the case is at the final stage and fixed for rebuttal evidence and arguments.

The perusal of the impugned order shows that the order is as per law and no illegality has been committed while dismissing the application. The facts, which the plaintiffs now want to plead in the plaint regarding firm being HUF firm and plaintiff No.2 being Karta were in the knowledge of the plaintiffs and the case is now at the final stage. In no way, it can be held that plaintiff No.2 Sanjay Jain was not knowing that plaintiff No.1 is HUF firm and he is Karta. Furthermore, plaintiff No.2 appeared in the Court as PW-1 and has filed affidavit by stating himself as sole proprietor of plaintiff No.1, which is a proprietorship firm. Now, the plaintiffs want to change the nature of the suit, specially when plaintiffs No.2 gave evidence in the Court and also wants to change the evidence produced by him by way of amendment of the affidavit. Even, amendment of affidavit of PW-1 does not fall under Order 6 Rule 17 CPC. Therefore, the application qua amendment of affidavit, which was given in the evidence by plaintiff No.2, is not maintainable to that extent. The petitioners by way of this amendment, want to change/resile from the statement given by plaintiff No.2 as PW-1. If the amendment is allowed, then it will cause prejudice to the case of defendants and further change the nature of the suit also.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 26.09.2017 passed by learned Civil Judge (Jr. Divn.), Panipat, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 31, 2018	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No