

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 85 of 2017

Decided on : 31.8.2017

Beas Valley Power Corporation Ltd. ...Petitioner
Versus

Pradeep Chand Katoch. ...Respondent

Coram

Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. J.S. Bhogal, Sr. Advocate with Mr.
Suneet Goel, Advocate.

For the respondent : Mr. Nipun Sharma, Advocate.

Sureshwar Thakur, Judge (oral)

During the pendency of Civil Suit No. 41 of 2015, the plaintiff instituted an application, cast under the provisions of Order 6 Rule 17 CPC, before the learned trial Court wherein the plaintiff sought leave with respect to hereinafter extracted amendment/deletions, being made in the apposite paragraphs of the plaint:

“In para 1 of the plaint, the Deputy Chief Engineer Sh. Harish Malhotra may be deleted and substituted to be read as Superintending Engineer, Sh. Ashwani Kumar dogra and the resolution No. 4/2011 may be substituted with Resolution No. 8/41 and dated

18/10/2011 may be deleted and read as 27/4/2013. The amendment is being made in Para 1 of the plaint since the concerned officer of the plaintiff Corporation has changed and the earlier officer has since retired.”

The words appears in 2nd line of para 5 “and the fact that only 10% of the total work had been executed by the defendant vide letter dated 3/6/2008. The detail of the works which had been executed by the defendant was intimated vide letter dated 11/6/2008 may be deleted from the plaint, as these letters relates to another similar type of work awarded to same defendant contractor.”

On the aforesaid application, the learned trial Court proceeded to allow relief in regard to substitution of authorized person for the same being only formal in nature and due to stated eventuality of retirement of the said earlier officer:-

“After hearing the parties and perusing the record, in the entirety of the given facts and circumstances of the case, to my mind, at the state the application deserves to be allowed partly only to the effect of firstly sought amendment in regard to substitution of authorized person for the same being only formal in nature and due to stated eventuality of retirement of the said earlier officer. However, in regard to second amendment in para No.5 as sought, the objection of the respondent for the same being withdrawal of admission, is legally sustainable.

Moreover, the parties litigating before the court are supposed to be diligent and act with bonafide and goodfaith. In regard to the second amendment as sought the contention of the applicant that it is typographical error do not appear to be trustworthy, cogent and plausible, as the applicant is a corporation and its work is handled by professionals and it cannot be treated at par with a common man. Moreover, if the explanation so furnished in that regard is accepted, then the relevance of verification of pleadings and filing of affidavit in support thereof becomes purposeless. So, it may be safely and reasonably concluded that so far as the second amendment is concerned the applicant is lacking on the count of being diligent and other heads as mentioned supra. Hence such amendment cannot be allowed at the stage and accordingly, the same is hereby disallowed. Application stands disposed of accordingly and only amendment qua formal substitution of authorized person is permitted and rest is declined. The application after registration and completion be tagged with main case file.”

Whereas, it declined relief to the plaintiff/applicant in respect of amendment(s) being concerted vis-à-vis paragraph 5 of the plaint. The petitioner being aggrieved therefrom, has instituted the instant petition before this Court.

2. Apparently, the proposed amendment by way of

deletion(s), of, necessary portion(s) of paragraph 5 of the plaint, would beget change of the structure besides the complexion of the pleadings reared therein. Consequently, the order declining relief vis-à-vis the plaintiff, in respect of apposite portions of paragraph 5 warranting deletion, is not permeated with any vice of any illegality or material irregularity.

3. Be that as it may, even though the aforesaid pleadings initially cast in the plaint, may constitute estoppel by pleadings yet the plaintiff within the legally permissible domain(s) may adduce before the learned trial Court the best documentary evidence for overcoming effect(s) thereof. Also, the learned trial Court shall within the legal enjoined parameters pronounce in respect of their evidentiary worth also shall pronounce qua the aforesaid evidence, hence ousting attraction of the principle of estoppel vis-à-vis the pleadings borne in para 5 of the plaint. The petition stands disposed of. All pending application(s) also stand disposed of. The parties are directed to appear before the learned trial Court on **10.10.2017**. Records be sent back forthwith.

Dasti copy.

(Sureshwar Thakur)
Judge

31st August, 2017
(kck)