

Serial No. 122

Suppl list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CM (M) No. 84/2023

CM No. 2619/2023

Pronounced on : 01.09.2023

1. Mohammad Rafiq Mir (Age: 42 years)
2. Shabir Ahmad Mir (Age: 35 years)
3. Gulzar Ahmad Mir (Age: 31 years)

All sons of Ghulam Mohammad Mir
Residents of Bemina, District Srinagar.

.. Appellant/petitioner(s)

Through: -
Mr. Nisar Ahmad Bhat, Advocate

V/s

1. Mohamad Bhat
S/o Talib Bhat,
R/o Bemina, District Budgam.
2. Mst. Zamrooda,
W/o Zahoor Ahmad Mir,
R/o Hamdania Colony, Bemina, Srinagar.
3. Mst. Zubaida
W/o Bashir Ahmad Bhat
R/o Giri Mohalla, Bemina, Srinagar.
4. Bashir Ahmad Bhat,
S/o Ghulam Mohammad Bhat,
R/o Giri Mohalla, Bemina, Srinagar.
5. Commissioner, Srinagar Municipal
Corporation, Srinagar.
6. Chief Khilafwarzi Officer, Srinagar Municipal
Corporation, Srinagar.
7. Ward Officer, W.No. 27, Srinagar Municipal
Corporation, Srinagar.
8. Chief Enforcement Officer, Srinagar
Municipal Corporation, Srinagar.

... Respondent(s)

Through: -
Mr. N.A.Beigh, Sr. Advocate with
Mr. Sofi Manzoor, Advocate.

**CORAM: HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE
(JUDGMENT)**

1. The trial court has allowed the applicant (plaintiff No.4 in the suit) to amend the plaint in terms of Order 6 Rule 17 CPC on the ground that the withdrawal of co-plaintiffs from the suit has necessitated the

amendment. The court also did not agree with the private defendants that the amendment, if allowed, shall change the nature of the suit. The court also allowed the amendment on the ground that certain events have taken place after the institution of the suit and pertain to permission which has been canceled in the year 2020 and, therefore, there is no impediment in allowing the application.

2. Learned counsel for the petitioners herein has taken the court through the record of the case in order to impress upon the court that the application could not have been allowed by the trial court. The counsel has referred to the litigation which is pending between the parties and the earlier orders passed by the courts regarding the permission which has been granted by the Srinagar Municipal Corporation or kept in abeyance.
3. Learned counsel appearing for the petitioners herein has submitted that the trial court has not passed the order in accordance with law as the reason given in the order prima facie does not fall within the parameters of Order 6 Rule 17 CPC. The main contention raised by the petitioners is that the trial court has by way of amendment of plaint allowed the private respondent No.4 herein to challenge the order passed by the Municipal Authorities against which the suit is not maintainable.
4. The respondents have appeared through counsels and argued the matter.
5. Mr. N.A.Beigh, learned Senior counsel for the private respondents has argued that the order is perfectly valid in law and the trial court has not acted outside its jurisdiction while allowing the application for amendment of plaint. The submissions made by the counsel for the petitioners could not be gone into while considering the application in question. The trial court if satisfied that the plaint is required to be amended, the order cannot be set aside solely on the ground that the court has no jurisdiction to take cognizance of the amendment which has been allowed by the court.
6. As mentioned above, the trial court has allowed the application on the ground that the amendment, if allowed, the same will not change the nature of the case and consequently the intervening circumstances has prompted the plaintiff to seek amendment. The court cannot give its

final verdict in the present petition about the proceedings which are required to be taken out in the suit by the trial court as the various factors are required to be determined while finally deciding the suit. The court while allowing the application for amendment is not required to go into the legality or illegality of the circumstances on the basis of which the amendment is sought for in the plaint. The act of the official respondents which is sought to be challenged in the application too cannot be determined by the court while considering the application. The order which is sought to be made part of amended pleadings is subject matter of the jurisdiction to be exercised by forum other than the civil court. It may be mentioned herein that the application sought undoubtedly mentions of the order of the Srinagar Municipal Corporation which has been passed by the Authority after the institution of the suit.

7. The Court finds no illegality so far as allowing this prayer of the respondents herein is concerned and mentioned in the application. The Courts need not give narrow interpretation to the provisions of Order 6 Rule 17 as it is well settled proposition of law that the amendment can be sought at any time before the suit is finally decided. The merits of the contents sought to be incorporated in the amended plaint cannot be judged at the time of disposal of the application but can be considered after framing of additional issue, if required.
8. The Court is of the view that the defendants are not in any manner prejudiced the way of amendment which is sought by the private respondents in the suit and allowed by the court. The withdrawal of the suit by the co-plaintiffs is not to derail the rights of the remaining plaintiff, if any, only for the reason that the other plaintiffs have opted out of the suit.
9. In (2002) 7 SCC 559, the Hon'ble Apex Court allowed the amendment while discussing various factors including the one that the delay in filing the application cannot be the reason to not allow the application.
10. The Court does not find any reason to interfere in the order impugned in the present petition. The Court in exercise of power under Article

227 of the Constitution of India does not find any reason to entertain the present petition which is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

SRINAGAR
01.09.2023
Pawan Chopra

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable: Yes/No

