

Before :- Dr. Bharat Bhushan Parsoon, J.

CR No. 4733 of 2014. D/d. 18.11.2014.

Ramesh Kumar - Petitioner

**Versus**

Parkash Singh and another - Respondents

For the Petitioner :- Ashish Aggarwal, Advocate.

## JUDGMENT

**Dr. Bharat Bhushan Parsoon, J.(Oral)** - Merely because there is delay in making an application for amendment of the plaint, and when the amendment sought for is necessary for complete and effective adjudication of the matter in controversy between the parties and the suit cannot be effectively decided without such amendment, there should not have been any hesitation with the court to allow such amendment.

2. In the suit for seeking decree for permanent injunction, during pendency of the suit, shop in dispute was demolished by the respondent defendant putting the plaintiff, petitioner herein, to be on the road. This plea of the plaintiff-petitioner is also supported from the fact that in another proceedings before this Court, the fact of demolition of the shop in the intervening night of 19/20 March, 2011 had also come up, whereas the suit has been filed by the petitioner-plaintiff on 18.3.2011.

3. The suit was for seeking a decree of permanent injunction restraining the defendants from dispossessing the plaintiff, but since, now the shop has been demolished, the said relief has become redundant and amendment of the plaint has become essential. Clearly enough, the trial court has not taken core aspects of the matter into consideration while passing the impugned order.

4. To obviate delay, no notice is being issued to the defendant respondents, and particularly when factual matrix is not disputed, as is apparent from the impugned order itself.

5. Parties win or lose on their substantive rights and not on technicalities of procedure. When, admittedly presently the shop is nonexistent, amendment in the plaint has become necessary as the change in the suit property was brought by the defendants during the pendency of the suit when injunction application of the petitioner-plaintiff, which had been filed along with the suit, was even pending consideration.

6. Consequently, setting aside the impugned order, the revision petition is allowed. The petitioner-plaintiff is, however, burdened with costs of Rs. 10,000/- to be paid to the respondent-defendants for moving the application for amendment of the plaint belatedly.

7. To obviate delay, the lower court is directed to decide the suit within six months.