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

CR No.1892 of 2015

Date of decision: March 18, 2015

Ballar @ Balraj

.....Petitioner

Versus

Gian Parkash and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Amit Jain, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 16.12.2014, whereby application moved by the petitioner under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the written statement, was dismissed.

Learned counsel for the petitioner has submitted that by way of amendment, petitioner only wants to take up a legal plea that he had become the owner of the premises in question by way of adverse possession. The proposed amendment was very necessary for the just decision of the case.

Order 6 Rule 17 CPC reads as under:

“17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

In the present case, respondents No.1 to 6 have filed the suit for possession with consequential relief of permanent injunction against the petitioner. On the pleadings of the parties, issues were framed by the trial Court. When the case was listed for evidence of the plaintiffs, petitioner moved an application for permission to amend the written statement. By way of amendment, petitioner wants to take up the plea that he had become the owner of the premises in question by way of adverse possession. The said plea was available to the petitioner at the time of filing of the written statement, but the same was not set up by the petitioner at that time. Since the trial had already commenced, the learned trial Court rightly held that the application was liable to be dismissed as it could not be said that despite due diligence, petitioner could not have taken up the plea at the time of filing of the written statement now sought to be taken by him.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

March 18, 2015

m.singh