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

CR No.3560 of 2015 (O&M)

Date of decision: May 25, 2015

Jugal Kishore

.....Petitioner

Versus

Ashwani Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jaideep Verma, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 08.05.2015, whereby application moved by the respondent for amendment of the written statement, was allowed.

Learned counsel for the petitioner has submitted that the trial Court had erred in allowing the application moved by the respondent for permission to amend the written statement. In fact, by way of amendment, the respondent will change the nature of his defence. Moreover, the application had been filed at a belated stage. The case was fixed for evidence of the respondent and the respondent had failed to conclude his evidence despite eight opportunities.

Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) 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.”

Thus, as per above provision, parties can be permitted to amend their pleadings before the commencement of the trial. However, no application for amendment of pleadings shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, parties could not have raised the matter before the commencement of the trial.

In the present case, petitioner is the father of the respondent. Petitioner has filed suit for mandatory injunction directing the respondent to hand-over the vacant possession of the first floor of the premises in question to him. Respondent in his written statement had pleaded that the suit property had been purchased by the petitioner after selling the ancestral property. It was further the case of the respondent that he had raised construction over the first floor of the premises in question, which had been given to him in an oral partition by the petitioner. Now by way of amendment, respondent wants to explain the pleadings already taken by him in the written statement. Although, application was moved at the stage when the case was listed

before the trial Court for evidence of the respondent, but by way of amendment, petitioner only wants to explain the pleas already taken by him. In these circumstances, the learned trial Court rightly held that the proposed amendment will not change the entire complexion of the written statement.

In the facts and circumstances of the present case, no ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 25, 2015

m.singh