

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3515 of 2014

Date of Decision: 31.07.2015

Angrej Singh and another

.....Petitioners

Vs.

Kuljit Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jastej Singh, Advocate,
for the petitioners.

Mr. G.S. Punia, Senior Advocate, with
Mr. Harveen Kaur, Advocate,
for the respondents.

SABINA, J.

Petitioners have filed this petition challenging the order dated 16.04.2014, whereby application moved by the petitioners for permission to amend the written statement, was dismissed.

Learned counsel for the petitioners has submitted that the amendment sought by the petitioners in the written statement was clarificatory in nature. Hence, the application moved by the petitioners for permission to amend the written statement was liable to be allowed. In support of his arguments, learned counsel has placed reliance on the judgement of this Court in case classificatory **Yakub Ali vs. Rubi and others** 2011 (1) R.C.R. (Civil) 129, wherein

it was held as under:-

“I have given my serious thought to the arguments advanced by learned counsel appearing for the petitioner. In my humble opinion, proviso to Rule 17 of Order 6 would apply only when party seeking amendment wants to introduce new plea or case. Since plea of fraud and misrepresentation is already in the pleading from the very initial stage, hence, ground to prove fraud and misrepresentation would not amount to new plea. Ground to prove fraud and misrepresentation would amount to clarification in the pleading. Moreover, if amendment sought does not require any further evidence or inconsistent evidence, such type of amendment giving clarification in the pleading must be allowed.”

Learned Senior counsel for the respondents, on the other hand, has opposed the petition.

Respondents have filed suit for specific performance of agreement to sell dated 20.02.2006. Petitioners filed their written statement. When the case was listed for evidence of the defendants-petitioners, they moved an application for permission to amend the written statement. By way of amendment, petitioners want to take up the plea that they had approached the office of the Sub-Registrar on 20.10.2006, but then the Sub-Registrar was not present in the office on the said date and petitioners could not present the application/affidavit dated 20.10.2006 (Annexure P-7) and (Annexure P-6) before the said officer for marking their presence. 21.10.2006 and 22.10.2006 were holidays, therefore, Annexures P-6 and P-7

were put up before the Sub-Registrar on 23.10.2006.

Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') reads as under:-

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 the above provision, parties can be permitted to amend their pleadings but 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 parties could not have raised the matter before the commencement of trial.

In the present case, the application for permission to amend the written statement was moved after the trial had commenced. The facts now sought to be brought on record by the petitioners by way of amendment of the written statement were already in their knowledge at the time of filing of the written statement. However, when the written statement was filed by the petitioners they did not plead the facts now sought to be brought on

record by them by way of amendment. There is nothing on record to suggest that despite due diligence petitioners could not plead the facts now sought to be pleaded by them by way of amendment. I have gone through the judgement relied upon by learned counsel for the petitioners but the same fails to advance the case of the petitioners as it is based on different facts.

In the facts and circumstances of the present case, the learned trial Court had rightly dismissed the application, moved by the petitioners for permission to amend the written statement.

Hence, no ground for interference is made out.

Dismissed.

During the pendency of the petition, petitioners have examined official from the office of Sub-Registrar as DW-2. The said witness was not permitted to be cross-examined by the respondent, in view of the order dated 20.05.2014, passed by this Court. Since DW-2 has proved on record the endorsement made by the Sub-Registrar on 20.10.2006, on the application dated 23.10.2006 (Annexure P-7), moved by the petitioners, respondents are entitled to cross-examine the said witness, if so advised. Thus, it is ordered that in case, respondents desire, they would be at liberty to re-summon DW-2 for the purposes of cross-examination.

**(SABINA)
JUDGE**

July 31, 2015
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