

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

CR No. 4217 of 2015 (O&M)

Date of decision : 16.7.2015

Ramu alias Lala

... Petitioner

VS

M/s Vikram Electric Equipment Private Limited

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Kul Bhushan Sharma, Advocate, for the petitioner.

Rajesh Bindal, J.

The defendant has filed the present petition impugning the order dated 29.5.2015 passed by the learned Court below whereby the application filed by him for amendment of the written statement was dismissed.

In the case in hand, the respondent-plaintiff filed a suit for recovery. It was alleged that the petitioner had executed an agreement to sell with the respondent. Earnest money of ₹ 35 lacs was paid. Though sale of the part of the property was got registered, however, the amount of earnest money having not been adjusted, the plaintiff was entitled to refund of the same. The suit was filed on 12.12.2008. The application was filed at the stage when the case was fixed for defendant's evidence. Same having been dismissed by the learned Court below, the order has been impugned in the present petition.

Learned counsel for the petitioner submitted that the case is still at the stage of defendant's evidence. The plea sought to be raised goes to the root of the case and to defend the same properly, the petitioner should be allowed to take the pleas by way of amendment of the written statement. The law regarding amendment of the written statement is quite liberal as even consistent pleas can also be taken.

After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

The suit was filed by the respondent-plaintiff on 12.12.2008. The learned Court below in the impugned order has observed that after the petitioner filed the written statement, the application was filed by the respondent-plaintiff for a direction to the petitioner-defendant for production of documents. The learned Court below vide order dated 16.8.2012 directed the petitioner for producing the documents. Despite availing sufficient opportunities for the purpose, the petitioner failed to produce the documents. Under these circumstances, the learned Court below framed the issues on 3.12.2013 with the observations that the adverse inference may be drawn against the petitioner on account of his non-production of documents as directed. The evidence of the plaintiff was closed on 20.11.2014. Thereafter, the evidence of the petitioner-defendant started. He filed his affidavit for examination-in-chief on 4th date of hearing. Thereafter again adjournment was sought and finally the application for amendment was filed. It is claimed that preliminary objection no.2 raised in the written statement is sought to be amended by filing the amended written statement. In para 2 in the preliminary objection, which is sought to be replaced, which earlier was of about one page, now runs into 6-7 pages pleading history regarding number of sale-deeds registered and further mortgage of the property etc. All these were not pleaded by the defendant in the written statement filed earlier.

The plaintiff has already led his evidence to prove the case pleaded by him and also taking care of the defence taken by the petitioner in the written statement already filed. The conduct of the petitioner is also clear from the fact that he has not complied with the provisions of CPC providing for production of documents annexed with the written statement or before the framing of issues rather a direction issued by the Court has also been ignored. After the evidence of the petitioner started on 15.12.2014, the case was adjourned on six dates of hearing on which only the affidavit of the defendant for evidence in chief was produced and no other evidence was led. One DW filed his affidavit but he did not appear for his cross-examination. Thereafter, the application for amendment of the written statement was filed. Meaning thereby the application was filed

when the proceedings in the suit had already commenced. After the amendment in CPC in the year 2002, for seeking amendment after the commencement of proceedings due diligence has to be pleaded and proved to the satisfaction of the court, which is missing in the present case.

Considering the aforesaid facts and circumstances of the case, the learned Court below has rightly declined to allow amendment considering the stage of the suit and the conduct of the petitioner. No case for interference is made out. The petition is accordingly dismissed.

16.7.2015

vs

(Rajesh Bindal)
Judge