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

CR No.4588 of 2015

Date of decision: July 23, 2015

Chhinderpal Kaur

.....Petitioner

Versus

Hamir Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sham Lal Bhalla, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 02.07.2015, whereby application moved by the petitioner for permission to amend the plaint, was dismissed.

Learned counsel for the petitioner has submitted that earlier, the petitioner was not in the knowledge of the fact that notice under Section 80 of Code of Civil Procedure, 1908 ('CPC' for short) had been issued to the defendants/state. On coming to know about the fact that the petitioner had served notice to the state under Section 80 CPC, application for permission to amend the plaint was filed.

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.

Petitioner and respondent No.6 have filed suit for declaration to the effect that they alongwith defendants No.1 and 2 were legal heirs of Mukhtiar Singh and were entitled to receive his service benefits in equal shares. Defendants in their written statement, took up specific objection that no notice had been served under Section 80 CPC before filing of the suit. Issues were framed on the pleadings of the parties on 27.04.2012. When the case was listed for rebuttal evidence, if any of the plaintiffs and arguments, the application for permission to amend the plaint was filed. By way of amendment, plaintiffs wanted to take up the plea that notice under Section 80 CPC was issued to defendants No.4

and 5 on 28.01.2010. The plea taken by the plaintiffs that earlier they were not in the knowledge of the fact that notice under Section 80 CPC had been served on defendants No.4 and 5 fails to inspire confidence. Despite objection having been taken up by the defendants in the written statement that no notice had been served under Section 80 CPC, the plaintiffs had failed to immediately amend the plaint by explaining that notice under Section 80 CPC had been served on 28.01.2010. There is nothing on record to suggest that despite due diligence, plaintiffs could not take up the plea now sought to be taken by them by way of amendment before the evidence of the parties had commenced. In the facts and circumstances of the present case, the learned trial Court had rightly dismissed the application moved by the petitioner for permission to amend the plaint.

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

Dismissed.

**(SABINA)
JUDGE**

July 23, 2015

m.singh