

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

(219)

CR No.5148 of 2013

Decided on: May 18, 2015.

Union of India and another

.... Petitioners

Versus

Anil Chopra and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Namit Kumar, Advocate,
for the petitioners.

Mr. Vishwajit Bedi, Advocate,
for respondent No.1.

Mr. Ashok Kumar, Advocate,
for respondents No. 2 to 4.

M.M.S. BEDI, J (ORAL)

This is a revision petition filed by the petitioners-defendants against the order dated 02.05.2013, dismissing the application of the petitioners-defendants under Order 6 Rule 17 CPC seeking to amend written statement.

Brief facts relevant for the adjudication of the present revision petition are that plaintiff-respondent No.1 filed a suit for recovery of Rs.8,23,423/- on account of loss of a demand draft having been sent through speed post by defendant No.7 through Department of Post and Telegraph falling under Union of India. The petitioners-defendants Union of India seek to incorporate the legal defence under Section 6 of the Indian Post Office Act, 1898 and Rule 66-B of Indian Post Rules, 1933 providing that Government would not be liable for the loss or mis-delivery of any postal

article unless it is caused due to some fraudulent or willful act or default. Rule 66-B provides that in case of delay of domestic speed parcels beyond norms of the postal department, compensation to be provided shall be equal to composite speed post charges paid. Certain other legal objections are also sought to be incorporated by way of amendment.

The trial Court has dismissed the application on the ground that the amendment is not permitted as the trial has already commenced and that fresh issues would be required to be framed.

I have heard learned counsel for the petitioners as well as learned counsel for the respondents and carefully gone through the facts and circumstances of the case.

At present, the case is at the stage of production of evidence by the plaintiff-respondent No.1. The plea which is sought to be incorporated by written statement is a legal plea. As per rules of pleadings, the law is not required to be pleaded but the petitioners-defendants only seek to refer to a statutory provision which may be relevant and necessary to be considered. In view of the claim of the plaintiff-respondent No.1., the maintainability of the suit has already been questioned by the defendants-petitioners as well as by co-defendants and the Court is required to determine the maintainability in context to the legal provisions. No prejudice will be caused to the plaintiff-respondent No.1, in case the amendment is allowed. The law point raised in the written statement could have been put forth as a defence while filing the written statement. The written statement requires to be amended for the just decision of the case.

The petition is allowed. The impugned order Annexure P5 is hereby set aside. The amended written statement is permitted to be taken on

record without prejudice to the right of the plaintiff to file replication or to lead evidence in rebuttal as the defendant's evidence has not yet commenced on the issues of the rebuttal. Plaintiff would be entitled to cost of Rs.5,000/- to be paid on the date fixed by the trial Court.

(M.M.S. BEDI)
JUDGE

May 18, 2015
harsha