

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

CR No.5443 of 2015 (O&M)

Date of decision : 24.08.2015

Jatinder Singh and another

...Appellants

Versus

Rajinder Kaur and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Surinder Singh Siao, Advocate for appellants.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the order dated 10.08.2015 (Annexure P-3), whereby application filed by the petitioner-defendant for seeking amendment of the written statement by adding para in preliminary objection No.3 and in preliminary objection No.5, has been rejected in the suit which has reached at the stage of arguments.

Mr. Surinder Singh Siao, learned counsel appearing on behalf of petitioner-defendant submits that learned trial Court has declined the application on the ground that it has been filed belatedly, whereas, the aforementioned fact sought to be incorporated, came to the knowledge only at the time when application was moved and thus, impugned order suffers from illegality and perversity. In support of his submission, he has relied upon judgment rendered by Hon'ble Supreme Court in *Andhra Bank Vs. ABN Amro Bank N.V. and ors. 2007(3) R.C.R. (Civil) 585*.

I have heard learned counsel for petitioner-defendant.

On going through the contents of application, it is concluded that there is no averments with regard to the expression “Exercise of Due Diligence”, which is statutory requirement of law to be incorporated for seeking amendment in suit, which had been filed in 2011 and had reached at the stage of final arguments. Parties have already led evidence. Amendment sought to be incorporated would require additional evidence, whereas no such application has been filed. In case of such amendment, it amounts to de novo of the trial, which cannot be permitted.

The ratio decidendi culled out in the aforementioned judgment has been arrived at as application for amendment of the written statement, alongwith additional affidavit by way of evidence was also sought, keeping in view of circumstances, & Hon'ble Supreme Court, noticing such facts allowed amendment. However, facts as narrated above are totally contrary to the ratio decidendi as no such application for additional evidence in support of averments, sought to be incorporated by way of amendment, has been filed. There is no illegality and perversity in the order, much less, cannot be said to be without jurisdiction.

The amendment qua suit liable to be dismissed for want of impleadment of proper and necessary party would be taken care of under issue of maintainability, as raised in preliminary objection No.5 of the unamended written statement.

With the aforesaid observation, the revision petition is dismissed.

24.08.2015

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**(AMIT RAWAL)
JUDGE**