

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

**C.R No. 5769 of 2015**

**Date of decision : 04.09.2015**

**Sanjay and another**

**..Petitioners**

**versus**

**Savita and others**

**...Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. R.S. Budhwar, Advocate  
for the petitioners

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**RITU BAHRI , J.**

The present revision petition under Article 227 of the Constitution of India is for setting aside the order dated 03.07.2015 passed by learned Civil Judge (Jr. Divn.) Kharkhoda, Sonapat, vide which the application under Order 6 Rule 17 read with Section 151 CPC filed by the petitioners, has been dismissed.

Plaintiff/Respondent No. 1 filed a suit for recovery of damages to tune of Rs.51 lacs on 27.07.2012 against the defendants and thereafter, the plaintiff moved two applications for amendment of the case firstly on 29.10.2011 and secondly on 21.05.2012. The defendants also moved an application under Section 151 CPC on

03.10.2013, which was allowed on 07.08.2014. The petitioners filed their written statement on 15.07.2014. The plaintiff filed amendment plaint on 19.01.2013 and the defendants filed amended written statement on 18.07.2013. Thereafter, the present application was filed by the petitioners for amendment of written statement on 25.02.2015 on the ground that during the course of evidence of the plaintiff, some facts were revealed about the concealment of earlier marriage of the husband. The application of the petitioners has been dismissed on the ground that as per amended plaint, which was filed on 19.01.2013 in para No. 5 and 6, the fact regarding marriage was disclosed. Thus, the petitioners at the time of filing of their amended written statement had due knowledge about the fact which they want to incorporate in the written statement and thereafter, it cannot be said that inspite of due diligence, this fact was not in their knowledge before the commencement of the trial.

Order 6 Rule 17 of the Code reads as under:-

*“17. Amendment of Pleadings.-the Court may at any stage at 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:*

By reason of the Civil Procedure Code (Amendment Act), 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:-

*“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.”*

It is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied viz, it must come to a conclusion that in spite of due diligence that parties could not have raised the matter before the commencement of the trial.

Reference at this stage can be made to a case '**Vidyabai and others v. Padmalatha and another, 2009 (1) R.C.R (Civil) 763**' wherein it has been held that Court can allow the amendment application under Order 6 Rule 17 of the trial before the commencement of the trial but not after the commencement of the trial. The proviso to Order 6 Rule 17 is couched in a mandatory form.

Further the defendants had also moved applications dated 31.10.2013, 30.08.2014 and 27.10.2014 which shows that an attempt

was being made by them to delay the proceedings of the trial and hence the trial Court had rightly exercised its discretion while dismissing the application of the petitioner for amending the written statement.

The revision petition is dismissed being devoid of merits.

**(RITU BAHRI)**  
**JUDGE**

04.09.2015

G Arora