

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

CR No.7235 of 2015.

Date of Decision: 06.11.2015.

Chuni Ram @ Chuni Lal

....Petitioner.

VERSUS

Bharat Puri

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amandeep Singh, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this petition under Article 227 of Constitution of India, petitioner has sought setting aside the order dated 06.10.2015 passed by Civil Judge (Senior Division), Gurdaspur whereby application filed by the defendant-petitioner under Order 6 Rule 17 of the Code of Civil Procedure (for short, “the Code”) for amendment in the written statement was dismissed.

The facts are that respondent Bharat Puri filed a suit for mandatory injunction seeking direction to the petitioner-defendant to vacate the shop in dispute. He also prayed for recovery of Rs.4900/- as arrears of rent due from the petitioner for the period w.e.f. June, 2009 till date

alongwith interest at the rate of 18% per annum. The petitioner appeared and contested the suit and filed the written statement raising various legal and factual objections. He claimed to be in possession of the shop in dispute as owner by virtue of a sale agreement dated 31.12.2008 executed by one Smt. Amrit Lata alleged predecessor of the respondent-plaintiff and not as a tenant.

Both the parties adduced evidence in respect of their rival contentions.

After the petitioner-defendant had closed his evidence, he filed an application seeking amendment of the written statement to the effect that Amrit Lata was not the owner of the suit property and the said property was owned by Central Government being *Arazi Matruka* and she had been wrongly receiving rent from him and (petitioner-defendant). The petitioner further intended to plead by way of amendment that he had filed a petition under Section 15 of the Punjab Package Deal Properties (Disposal) Act, 1976 (in short, "the Act of 1976") before Chief Sales Commissioner, Gurdaspur for cancellation of conveyance deed dated 07.10.2008 procured by Amrit Lata qua the suit property. The Chief Sales Commissioner, Gurdaspur cancelled the allotment/conveyance deed and his order has been upheld upto the Court of Financial Commissioner, Punjab, Chandigarh.

Finding that the passing of the orders in the petition filed by the petitioner-defendant under the Act of 1976 were very much in the knowledge of the petitioner-defendant but he did not take up any such plea during the trial of the case and therefore, at the fag end of the case

amendment proposed by the petitioner-defendant could not be allowed learned trial Court dismissed the application of the petitioner.

Aggrieved by the impugned order, the petitioner has preferred the instant revision petition.

The submissions made by learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner could not deny the fact that the petition under the Act of 1976 was filed by the petitioner-defendant on 05.03.2010 and the written statement in the present case was filed by him (petitioner) on 23.11.2010, but he could explain no reason why pendency of the petition under the Act of 1976 was concealed by the petitioner when he filed the written statement. Subsequently also, during the trial though the application under the Act of 1976 is alleged to have been decided on 31.03.2011 by the Chief Sales Commissioner, Gurdaspur and the order was upheld upto the Financial Commissioner, the petitioner-defendant never bothered to refer to the said proceedings during the entire trial. For the reasons best known to him, he remained silent about the said orders till he closed his evidence on 20.08.2015. On the contrary, he pleaded about an agreement of sale executed in his favour by deceased owner Amrit Lata, predecessor in interest of the respondent-plaintiff and claimed on that basis that he was in possession of the shop as an owner by virtue of the sale agreement and was not a tenant. At the fag end of the trial, learned trial Court rightly did not allow the petitioner to take a U-turn.

Otherwise also, the order of Financial Commissioner is persi

admissible and can be referred to during the course of arguments. At this stage to put the same or the proceedings in which it has been passed in the pleadings, cannot be allowed as it will completely change the defence set up by the defendant. Needless to say that the order will have its own course but as far as the present case is concerned the defendant intentionally concealed those proceedings and therefore cannot now at the fag end of the case plead about the same.

Thus, finding no illegality or perversity in the order of learned trial Court calling for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

06.11.2015.
jitender