

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

**CR No.8036 of 2015 (O&M)
Date of decision: 30.11.2015**

Satya Parkash and others

....Petitioners

Versus

Kuldeep Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. L.S. Bhangu, Advocate
for the petitioners.

RITU BAHRI J. (Oral)

The petitioners have come up in revision for setting-aside the order dated 12.08.2015 (Annexure P-1), passed by Additional Civil Judge (Sr. Division), Rajpura, vide which the application for amendment in the written statement has been dismissed.

The respondents-plaintiffs filed a suit for declaration to the effect that the order dated 23.12.2009, passed by the Collector, Sub-division Rajpura, in a petition under Section 4 of the Redemption of Mortgage Act, 1913, is null and void, against the principles of natural justice and the entries corrected in their names on the basis of the abovesaid order is also null and void. In

this suit, the present petitioners/defendants No.1 to 3 filed their written statement and the defendant No.4, namely, Megh Raj son of Krishan Chand was proceeded against ex parte vide order dated 27.05.2010. Thereafter, defendant No.4 filed an application on 30.08.2013, for setting-aside the ex parte order dated 27.05.2010. This application was allowed by Civil Judge (Jr. Division), Rajpura on 19.05.2014, by imposing cost upon the said defendant. Thereafter, Megh Raj-defendant No.4 has filed his written statement on 24.08.2015 and has taken all the grounds in the written statement for which the application for filing amended written statement by defendants No.1 to 3/petitioners was made.

An application for amendment in the written statement was kept pending from 30.08.2013 till 12.08.2015, in the above background and the impugned order is to be examined.

The trial Court has dismissed the application for amendment in written statement by taking into account that the issues were framed on 26.10.2010 and during the pendency of the suit, when the case was fixed for plaintiff's evidence, the application under Order 6 Rule 17 CPC was filed by the petitioners. This application has been filed after a gap of three years from the date of framing of the issues. The amendment cannot be allowed after the commencement of the trial and this provision has been considered by Hon'ble Supreme Court in

“Vidyabai and others vs Padamlatha and another”, 2009(1)

RCR (Civil) 763 and “Ajendraprasadji N. Pande and another vs Swami Keshay Parkeshdasji N. and others”, 2007(1) RCR (Civil) 481.

The amendment could not be sought earlier despite due diligence, even though, the trial had commenced. Moreover, in the facts of the present case once the trial Court had accepted the written statement of defendant No.4 which includes all the amendment sought by the present petitioners/defendants No.1 to 3, then, the petitioners/defendants No.1 to 3 cannot be put at lower pedestal.

So, keeping in view the above facts and circumstances, the present revision petition is disposed of with a direction to the trial Court to accept the amended written statement filed by the petitioners/defendants No.1 to 3.

(RITU BAHRI)
JUDGE

30.11.2015

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