

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

CR-8253-2015

Date of decision:7.12.2015

Sukhdev Singh

...Petitioner

Versus

Mahinder Singh

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Damanjeet, Advocate for the petitioner

SNEH PRASHAR, J.

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 16.9.2015 passed by learned Additional Civil Judge (Sr.Divn.), Guruharshai, District Ferozepur vide which application under Order VI Rule 17 of the Code of Civil Procedure filed by the petitioner/defendant was dismissed.

A suit for possession by way of specific performance was filed by the respondent-plaintiff on the ground that an agreement to sell dated 17.12.2007 was executed by the petitioner in his favour for sale of land measuring 11 kanals 14 marlas situated in village Bahadar Ke Tehsil, Jalalabad, District Ferozepur. The suit was contested by the petitioner by filing written statement. At the

stage of evidence of the respondent-plaintiff, the petitioner-defendant filed an application for amendment of his written statement on the ground that his earlier counsel had not raised proper defence pleadings. By way of amendment he sought to add para No.1A in the written statement to plea inter alia that he had dealings with one commission agent namely Jagdish Lal alias Titu, who obtained his signatures on some blank stamp papers and some registers for securing the dealings of the respondent-plaintiff with the firm and as his relation became strained with the commission agent and the respondent-plaintiff converted the blank stamp papers signed by him (petitioner) in to the agreement to sell in favour of the respondent-plaintiff, which is forged and fabricated.

The submissions made by learned counsel for the petitioner have been heard.

Learned counsel for the petitioner submits that the counsel engaged by the petitioner at the initial stage of suit did not draft the written statement incorporating all defence pleas intimated to him by the petitioner. It is only when the petitioner changed his counsel and was told about his defence pleadings that he came to know that the facts told by him to the earlier counsel were missing in the written statement. Learned counsel contends that on account of the fault of the counsel, the litigant should not be left to suffer. If

the amendment in the written statement is not allowed, it will cause an irreparable loss to the petitioner- defendant. The pleas infact would helpful to the Court for proper adjudication of the matter.

In the present case, the issues were framed on 02.07.2014. The plaintiff-respondent has already led his evidence and has closed the same. It is none when the case is filed for defendant's- petitioner's evidence that by way of amendment in the written statement, he wants to raise new pleas in order to change the entire nature of his defence. Change of counsel in the mid of the trial is no ground to allow him to plead an altogether new defence story. It is not the case that the facts sought to be pleaded had been put in defence/ cross examination to the witness of the plaintiff. It seems that only to delay the proceedings/ trial of the case that he has filed application for amendment.

As per the provisions of Order VI, Rule 17 of the Code, after the trial has commenced, the application for amendment should not be allowed in routine. The law relating to the amendment is not that liberal when the facts sought to be brought on file by way of amendment were within the knowledge of the party but were not pleaded at the first instance unless some sufficient cause is explained for omission of the same.

In the above premises, finding no illegality or perversity

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in the impugned order warranting intervention by this Court, the present revision petition is hereby dismissed.

7.12.2015
gsv

(SNEH PRASHAR)
JUDGE