

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

Civil Revision No. 8080 of 2014.
Date of Decision : 19.03.2015.

Jagdish Kaur

...Petitioner

Versus

Mohinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA.

Present: Mr. Pankaj Bali, Advocate for the petitioner.

Mr. R.S. Beins, Advocate for respondents No. 1 and 2.

Sabina, J.

Petitioner has filed this revision petition challenging the order dated 26.09.2014 (Annexure P-9), whereby, application moved by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), was dismissed.

Learned counsel for the petitioner has submitted that the petitioner had filed written statement with the counter claim seeking a decree of specific performance but inadvertently the word specific performance on the basis of oral agreement to sell was omitted to be mentioned. Therefore, the petitioner filed an application for amendment of the counter claim which was declined by the Trial Court below on the ground that it was belated. The said order was challenged by the petitioner by way of Civil Revision No. 5163 of 2014 but it was withdrawn with liberty to file fresh one after availing remedy for seeking correction before the trial Court of the year 2000 instead of 2002

qua the agreement to sell. Thereafter, the petitioner filed the application for correction before the trial Court which has again been dismissed by the Trial Court vide impugned order dated 26.09.2014.

Learned counsel for the petitioner has further submitted that he has already led the entire evidence and would not seek any opportunity to lead any evidence except for making a mention in the counter claim that he is seeking the decree for specific performance on the basis of oral agreement to sell of the year 2002.

Learned counsel for respondents No. 1 and 2, on the other hand, has opposed the petition and has submitted that the petitioner had earlier sought amendment of the written statement/counter claim and the same was dismissed vide order dated 06.05.2014. The said order was challenged by the petitioner before this Court by filing Civil Revision No. 5163 of 2014. The said revision petition was got dismissed as withdrawn by the petitioner with liberty to enable her to file a fresh one after availing remedy for seeking correction before the trial Court. Instead of doing the needful, the petitioner moved a fresh application seeking amendment of the counter claim. Hence, the second application moved by the petitioner seeking amendment of the counter claim was rightly dismissed by the trial Court.

Respondents No. 1 and 2 have filed suit for possession and permanent injunction. Petitioner filed her written statement and along with the same, she also filed a counter claim. The suit was filed by the plaintiffs on 24.05.2005 and issues were framed

by the trial Court on the pleadings of the parties on 20.02.2007. Plaintiffs closed their evidence on 25.07.2011. Thereafter evidence of the defendants was closed by order on 11.11.2013. When the case was listed for rebuttal evidence of the plaintiffs, the petitioner moved an application under Order 6 Rule 17 CPC, for permission to amend the counter claim. The said application was dismissed by the trial Court vide order dated 06.05.2014. The said order was challenged by the petitioner before this Court vide Civil Revision No. 5163 of 2014. The said petition was disposed of on 07.08.2015 and following order was passed :-

“Learned counsel for the petitioner wishes to withdraw this petition with liberty to file fresh one after availing the remedies for correction before the trial Court.

Dismissed as withdrawn with aforesaid liberty.”

Thereafter instead of seeking remedy for correction before the trial Court, the petitioner moved fresh application under Order 6 Rule 17 of CPC for permission to amend the counter claim. The said application was rightly dismissed by the trial Court as earlier application moved by the petitioner qua the same relief had been dismissed by the trial Court.

In the facts and circumstances of the present case, there is no force in the submissions made by learned counsel for the petitioner. Hence, no ground for interference is made out.

Dismissed.

March 19, 2015.
kanchan

(SABINA)
JUDGE