

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 8757 of 2014

Date of Decision: 07.07.2015

Hans Raj

.....Petitioner

Vs.

Satish Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Neeraj Sharma, Advocate, for
Mr. J.S. Toor, Advocate,
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition challenging the order dated 20.09.2014, whereby application moved by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC'), was dismissed.

Learned counsel for the petitioner has submitted that by way of amendment, petitioner only wants to incorporate the plea qua the earlier litigation between the parties. The orders qua the said earlier litigation were already proved on record.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that the facts now sought to be incorporated by the petitioner by way of amendment in

the written statement were already in the knowledge of the petitioner at the time of filing of the written statement. Application for permission to amend the written statement had been filed at the stage when the case was listed before the trial Court for evidence of the defendants.

Order 6 Rule 17, CPC reads as under:-

Amendment of pleadings:-

“The Court may at any stage of 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:

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.”

Thus, as per the above provision, parties can be permitted to amend their pleadings but 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 parties could not have raised the matter before the commencement of trial.

In the present case, the application for permission to amend the written statement has been moved after the trial had commenced. By way of amendment, petitioner wants to incorporate the factum of earlier litigation between the parties. The fact that

plaintiff had earlier filed suit against the petitioner was well within his knowledge at the time of filing of the written statement. The plea taken by the petitioner in the application under Order 6 Rule 17, CPC (Annexure P-7) is that his counsel could not consult him properly at the time of filing of the written statement. This ground is not sufficient to allow the application for amendment of the written statement after the commencement of the trial.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 07, 2015
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