

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

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CR 1298 of 2016
Date of decision: 12.05.2016

Meenakshi *Petitioner*

Versus

Dhanwant Kumar and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Arvinder Arora, Advocate
for the petitioner

Mr. Sanjay Jain, Advocate
for respondent No. 7

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present petition has been directed against the order dated 22.01.2016 (Annexure P6) passed by the trial Court, dismissing the application of the petitioner/plaintiff for amendment of the plaint.

Counsel for the petitioner would contend that the petitioner filed an application under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint with the averments that she was illegally and forcibly dispossessed from the house in question on 20.05.2013 which has necessitated amendment of the plaint in order to seek the relief of

possession. It is further submitted that the learned trial Court without considering the facts pleaded in the application has dismissed the same by recording certain reasons not borne out from the record, sufficient to show that the impugned order has been passed without application of mind.

Counsel for the respondents has submitted that the application for amendment was filed in November 2014 by raising a plea that the applicant was dispossessed on 20.05.2013 and this long delay on the part of the petitioner is sufficient to prove that the allegations raised in the application are patently false.

I have heard counsel for the parties and perused the paper book particularly the order impugned.

A relevant extract from the impugned order reads as follows:-

“9.The present suit was filed in the year 2001 (read 2011) and the pleadings of the present case was prepared by the learned counsel for the plaintiff on the basis of facts told to him by the plaintiff. Had the plaintiff been ever dispossessed from the suit property which was a major incident then it ought to have been in the mind of the plaintiff at the time of filing the present suit. There is nothing new that has now arisen during course of trial which has now necessitated the filing of present application. Dispossession of the plaintiff is any from the house in question ought to have been averred by the plaintiff at the time of filing the present suit and the reasons put forth by the plaintiff to seek such an amendment at this stage are not at all appealing to the mind of undersigned. Moreover, the allegation of the defendants such an amendment is being pleaded just to delay the disposal of the case and that the plaintiff was never dispossessed since it is the

defendants who are in possession of the suit property, these averments are having some weightage also. Resultantly, finding no merits in the application, same is hereby dismissed, as no new fact had arisen during the trial which was not within the knowledge of plaintiff at the time of filing the suit.”

The trial Court has dismissed the application primarily on two counts; namely that there is nothing new which has now arisen during course of trial which has necessitated filing of the present application. The other ground taken into consideration is that plea of the defendants that the application has been filed to delay disposal of the case, has some weight.

As the applicant clearly and categorically alleged that she has been dispossessed from the suit property on 20.05.2013 during pendency of the suit instituted in the year 2011, the observations made by the trial Court that nothing new has arisen during course of trial are the result of a complete non-application of mind and by disregarding the facts averred in the application. That being so, the impugned order passed by the trial Court cannot be allowed to sustain and is accordingly set aside. However, the matter is remitted to the trial Court for decision of the application for amendment of the plaint afresh, after hearing counsel for the parties, in accordance with law.

(Rekha Mittal)
Judge

12.05.2016
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