

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

CR No.4430 of 2016

Decided on: 18.07.2016

Darshan Lal

....Petitioner

Versus

M/s. Tower Vision and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Suveer Sheokand, Advocate
for the petitioner.

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

REKHA MITTAL, J.

The present petition has been directed against order dated 25.05.2016 passed by the Civil Judge (Sr. Division), Ludhiana dismissing application filed by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') for amendment of the plaint.

The petitioner has filed a suit for recovery of Rs.2,63,400/- along with a decree for mandatory injunction directing the defendants/respondents to remove the tower and other articles installed at the property, detailed in headnote of the plaint. The application for amendment of the plaint was filed to make additions at the end of para No.1 of the plaint, reproduced in para 1 of the impugned order. The learned trial Court in view of its detailed observations recorded in paras 3 to 5 of the impugned order has eventually dismissed the application both on merits as well as the same being hit by proviso appended to Rule 17 of Order 6 CPC by holding that the petitioner/applicant has

failed to satisfy the test of due diligence envisaged by the proviso.

Counsel for the petitioner has submitted that though suit filed by the petitioner for recovery and mandatory injunction is based upon lease deed dated 01.08.2008, unless the facts sought to be added by way of amendment are specifically pleaded, it may cause prejudice to his rights at the time of final decision of the suit. It is further argued that no prejudice would be caused to the contesting respondents in case the proposed amendment is allowed.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

Counsel for the petitioner has fairly conceded that lease deed dated 01.08.2008 is the basis of suit for recovery and mandatory injunction. As the petitioner has based his claim on the lease deed with the allegation that the same was executed by the contesting party, incorporating terms and conditions of the lease deed in the plaint cannot be said to be necessary for proper and effective adjudication of the case. As soon as the lease deed in question is produced and proved in accordance with law, whatever has been incorporated in the document would be taken into consideration for disposal of the suit. As per the settled position in law, the parties are required to plead only facts and not the evidence by which the disputed facts are sought to be proved. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

18.07.2016
yakub

(REKHA MITTAL)
JUDGE