

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 5233 of 2015**

**Date of Decision: 26.05.2016**

Navneet Singla

... Petitioner(s)

Versus

Haryana Urban Development Authority and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Ashwani Talwar, Advocate  
for the petitioner(s).

Mr. S.K.Mahajan, Advocate  
for respondent No.1-HUDA.

**Shekher Dhawan, J.**

Present petition under Article 227 of the Constitution of India for setting aside the order dated 6.7.2015, passed by learned Civil Judge (Junior Division), Panipat, whereby application, filed by petitioner/plaintiff under Order 6 Rule 17 CPC so as to produce on file copy of speaking order dated 5.5.2010 passed by the Chief Controller of Finance, Haryana Urban Development Authority, Panchkula, was dismissed.

The Court below declined the prayer of the petitioner so as to amend the plaint on the ground that plaintiff had already the knowledge of

the said order, whereas the proposed amendment is most relevant for the just decision of the case and the same should have been allowed by the Court below and present petition be accepted.

Learned counsel for respondent No.1 submitted that the Court below has already taken the correct view that despite due diligence, the petitioner could not raise this plea because the order, which the petitioner wants to plead and produce on file was passed on 5.5.2010 i.e. much before filing of the suit. The present suit was filed on 9.5.2012 and application for amendment of plaint was made on 14.11.2014. This factum was well within the knowledge of the petitioner and the same should have been pleaded before the commencement of the trial and the Court below has rightly dismissed the application.

Having considered the submissions made by learned counsel for the parties and considered the matter in controversy in its entirety, this Court is of the considered view that petitioner is seeking amendment of the plaint so as to challenge the order dated 5.5.2010, passed by the Chief Controller of Finance, Haryana Urban Development Authority, Panchkula. Undisputedly, the main suit was filed on 9.5.2012. That way, order dated 5.5.2010 was in existence at the time of filing of the suit and the order was well within the knowledge of the petitioner. Such an application should have been filed before the commencement of the trial. As per amended provisions of Order 6 Rule 17 CPC, amendment of plaint can be allowed before the commencement of the trial and not thereafter. Similar matter was before the Hon'ble Apex Court in *Vidyabai and Others v. Padamlatha and Another* 2009(1) RCR (Civil) 763, wherein it was observed as under:-

*“7. By reason of the Civil Procedure Code (Amendment) Act 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:*

*"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."*

*It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”*

However, in the present case, the fact, on the basis of which proposed amendment has been sought, was well within the knowledge of the petitioner right from the beginning and he should have pleaded this fact before the commencement of the trial only.

In the present case also, in exercise of due diligence, the petitioner should have taken this plea at the time of filing of plaint only or at any rate before the commencement of the trial. But that has not been done. The trial has already commenced. As per view taken by the Hon'ble Apex Court in ***Vidyabai's case*** (*supra*), the date on which the issues were framed, is the first date of hearing. In this case, trial has certainly commenced and the application has been filed at the belated stage and the Court below has rightly dismissed the application.

Consequently, present petition is without any merit and the same stands dismissed.

**(Shekher Dhawan)**  
**Judge**

**May 26, 2016**  
“DK”