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

CR-5787-2013

Date of decision : 14.07.2016

Sarabjit Singh @ Sahib Singh

... Petitioner

Versus

Kulwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Pritam Saini, Advocate
for the respondents.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.2 is aggrieved of the impugned order whereby applications seeking amendment of the written statement and for additional evidence in a suit seeking specific performance of the agreement to sell dated 30.10.2007 have been dismissed.

The stand of the petitioner-defendant No.2 is that the defendant No.2 at the time of the execution of the agreement to sell was minor as his date of birth is 08.01.1991 and in this regard, he has already brought on record the document Ex.D-10. However, in rebuttal, the respondent(s)-plaintiff(s) brought on record his school leaving certificate which shows his date of birth as 26.01.1989. It is, in these circumstances, the petitioner-

defendant No.2 had sought the aforementioned reliefs to seek the amendment in the written statement and place on record the birth certificate issued by the Government Civil Hospital, Karnal and the Dealing Assistant of the said hospital.

Mr. Munish Gupta, learned counsel appearing on behalf of the petitioner-defendant No.2 submits that in case of the aforementioned admission, immediately an application seeking amended written statement was filed and seeking the assistance of the Court in examining the aforementioned witness. The amendment is necessary and essential for the adjudication of the *lis* between the parties.

Mr. Pritam Saini, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that categorical stand in reply had been taken as the document now sought to be placed on record by way of amendment in the pleadings and additional evidence is also of the year 1991 which is not in consonance with the document Ex.D-10. The suit was filed on 22.04.2008 and the issues were framed. The aforementioned fact was in the knowledge of the petitioner-defendant despite exercise of “due diligence” and no explanation has come forth in bringing on record amendment and additional evidence and urges this Court for upholding the order, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that cardinal principle for amendment of the plaint and written statement is different. No doubt that the amendment and additional evidence sought to be incorporated and introduced at rebuttal stage, but the fact remains that the party shall not be deprived of leading the

evidence, which would enable the Court for expeditious disposal of the suit. The factum of the defendant being minor or not, is the controversy in the present suit. Though two different dates have already come on record and by virtue of the additional evidence and the amendment, some other date is being introduced, but same will be examined by the trial Court at the final stage.

Since, the petitioner-defendant No.2 had been lackadaisic in moving the application, I deem it appropriate to impose the cost of ₹ 10,000/- which shall be condition precedent and the same shall be paid to the learned counsel for the respondent(s)-plaintiff(s) in the High Court.

Accordingly, the impugned order, under challenge, is hereby set aside and the applications seeking amendment of the written statement and additional evidence are hereby allowed. The petitioner-defendant No.2

shall file the amended written statement within a period of 15 days from today and also file an application for seeking the summoning of the concerned witness and obtain *dasti* summons. The trial Court shall afford one opportunity, of course, right to rebut the aforementioned evidence which would always be available to the respondent(s)-plaintiff(s).

Resultantly, the revision petition stands allowed in the aforementioned terms.

14.07.2016
yogesh

(AMIT RAWAL)
JUDGE