

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

CR No.6375 of 2016(O&M)

Decided on. 18.11.2016.

Nachattar Singh

.....Petitioner

Versus

Malkiat Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Tarunveer Vashist, Advocate
for the petitioner.

Mr. Rishav Jain, Advocate
for the respondent.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 12.08.2016, passed by the learned Additional Civil Judge (Sr. Division), Sunam, vide which the application moved by the petitioner-defendant for amendment of the written statement has been dismissed.

2. I have heard Mr. Tarunveer Vashist, Advocate, learned counsel for the petitioner, Mr. Rishav Jain, Advocate, learned counsel for the respondent and have carefully gone through the paper book.

3. Initiating the arguments, learned counsel for the petitioner contended that the only amendment sought to be made in the written statement is that the petitioner-defendant wants to plead that he has never signed in Punjabi nor he signs in Punjabi. He contended that this amendment is not going to change the nature of the suit. The petitioner will not lead any further evidence, in case, the amendment is allowed.

So, there is no question of prolonging the proceedings. He contended

that this amendment in the written statement is essential for the just decision of the case and to determine all the controversies involved in the suit. He further contended that this plea could not be taken earlier inadvertently in the original written statement. Thus, he pleaded that the learned trial Court has wrongly dismissed the application filed by the petitioner for amendment of the written statement.

4. On the other hand, Mr. Rishav Jain, Advocate, learned counsel for the respondent contended that the amendment sought by the petitioner-defendant is not *bona fide*. Plaintiff has filed the suit for recovery on the basis of pronote. Now, he wants to deny that he never signs in Punjabi, just to cause prejudice to the rights of the plaintiff-respondent. He further contended that there is no explanation as to why this plea could not be taken in the original written statement. This application has been moved at the rebuttal stage when the trial has already come to the fag end. Thus, he contended that the application has been rightly dismissed by the learned trial Court.

5. I have duly considered the aforesaid contentions.

6. The plaintiff-respondent has filed the suit for recovery of Rs. 6 lacs (Principal amount Rs. 4,50,000/- + Interest Rs. 1,50,000/-) on the basis of promissory note. The said promissory note is stated to be signed by the petitioner in Punjabi. Now, petitioner wants to take the plea that he never signed in Punjabi nor he signs in Punjabi. This fact is not disputed that the parties have already led their evidence and now the case is at the rebuttal stage. So, the present application has been moved when the case has already reached at the rebuttal stage.

7. There is no dispute with the proposition of law that the

Court should allow all the amendments which are necessary to determine the real question in controversy between the parties. But, at the same time, the said amendment must be *bona fide* and should not have been sought *mala fide* to dislodge the other party. In the instant case, the petitioner has filed the written statement being fully aware of the fact that the plaintiff has filed the suit for recovery on the basis of promissory note, which is alleged to be signed by the petitioner-defendant in Punjabi. So, this plea was very much available to the petitioner from the very beginning that he never signs in Punjabi even at the time of filing of the original written statement. It is not such a fact that the same was not in the knowledge of the petitioner earlier in spite of due diligence. So, moving of this application at the fag end of the trial does not seem to be a *bona fide* act on the part of the petitioner. In fact, he wants to dislodge the plaintiff, who had already led the evidence to prove the execution of the promissory note. Such amendment is not permissible in law.

8. Moreover, the present application has been moved for amendment of the written statement when the case has already reached at the fag end. The Hon'ble Supreme Court in case **Vidyabai & Ors. Vs. Padmalatha & Anr. 2009(1) R.C.R.(Civil) 763** has laid down 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.”

In the instant case, the petitioner has not been able to show that as to why he could not raise this plea in the original written statement despite exercise of due diligence. So, the requirement of the proviso to Order 6 Rule 17 CPC are not fulfilled. Thus, I do not find any illegality in the impugned order passed by the learned trial Court.

9. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

10. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

November 18, 2016
S.khan

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No