

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

CR No.65 of 2014(O&M)

Date of decision:24.5.2016

Raj Pal

....Petitioner

VERSUS

Ram Sarup and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Vineet Chaudhary, Advocate for the petitioner.

Ms. Ravinder Kaur Manaise, Advocate for respondent No.1.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition has been directed against order dated 05.12.2013 (Annexure P-6) whereby application (Annexure P-4) filed by the petitioner/defendant No.2 for amendment of the written statement under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') has been dismissed.

Sh. Ram Sarup – respondent No.1/plaintiff has filed a suit for possession by way of specific performance of agreement of sale dated 16.02.2006 in respect of land measuring 14 Kanals 2 Marlas i.e. 282/5528 shares out of total land measuring 279 Kanals 8 Marlas detailed in head-note of the plaint with a prayer for permanent injunction restraining the defendants from alienating, mortgaging or transferring possession of the suit land.

The defendant/petitioner filed the written statement controverting allegations with regard to execution of agreement to sell, receipt of an amount of Rs.6,50,000/- towards earnest money or liability of the defendants to execute a registered sale deed in favour of the respondent/plaintiff on the basis of agreement. Later, an application was filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement and by way of proposed amendment, the petitioner sought to add preliminary objections No.8 and 9 and certain additions in para Nos.3 and 5 of the written statement detailed in para No.7 and 8 of the application primarily on the plea that the petitioner had engaged Sh. Karan Singh, Advocate who could not properly plead detailed facts in the written statement in spite of due diligence.

The learned trial Court after getting reply to the application filed by the plaintiff/respondent and having heard counsel for the parties, dismissed the application in the light of observations recorded in para 3 of the impugned order.

Counsel for the petitioner has submitted that law regarding amendment of the written statement is liberal in nature and the amendment of pleadings can be allowed at any stage of the proceedings. It is argued that no prejudice would be caused to the respondent/plaintiff in case the proposed amendment is allowed and cost is a panacea for delay attributed to the petitioner. It has further been argued that the proposed amendment is clarificatory in nature and is essential to decide the real controversy between the parties.

Counsel for the contesting respondent/plaintiff, on the contrary, has supported the impugned order with the submissions that in

case the petitioner is allowed to amend the written statement, it would change the entire defence version and that too at the stage when the respondent/plaintiff has already adduced evidence.

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

The learned trial Court in para 3 of the impugned order has observed that the written statement was filed by defendant No.2 on 26.03.2012. Thereafter, issues were framed and the plaintiff led his evidence. Then cross examination has been conducted by the defendant upon the plaintiff. The plaintiff has filed the present suit for specific performance of agreement to sell dated 16.02.2006. The defendant asserts that the agreement dated 21.11.2005 was in existence prior to the agreement to sell in question. The said agreement dated 21.11.2005 is not under challenge in the present case and the same was to the knowledge of the defendant from the very beginning. The plea of the defendant that despite due diligence of counsel at the time of filing written statement, this fact could not be incorporated, is not sustainable.

There cannot be any dispute about the settled position in law that amendment of pleadings can be allowed at any stage if the Court is convinced with the explanation tendered by the applicant qua his/her inability to plead the facts sought to be added by proposed amendment, at the time of submission of original pleadings and further those facts are necessary to decide the real controversy between the parties.

In the case at hand, the petitioner in para 3 of the application has averred that he had changed counsel one after the other and engaged Sh. Karan Singh, Advocate, who could not properly plead the proper

version. If such a plea of a party is accepted to be justified to allow amendment of the pleadings, there may not be a single case where the Court can refuse application for amendment of the pleadings. This apart, the original written statement was filed by the petitioner in March, 2012 and application for amendment has been filed a year later and that too after he has already cross-examined the plaintiff/respondent.

As plea raised by the petitioner does not appear to be bona fide and well-founded, I find myself unable to accept submissions of counsel for the petitioner that application for amendment is liable to be accepted.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

MAY 24, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE