

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

CR No.7426 of 2016
Date of decision : 07.11.2016

Kuldeep Kaur

...Petitioner

Versus

Jhalman Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Mohd. Yousaf, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the impugned order dated 14.09.2016, whereby application at the instance of respondents-plaintiffs seeking amendment of the plaint i.e. for converting from relief of mandatory injunction to possession and payment of Courts fees has been allowed.

Mr. Mohd. Yousaf, learned counsel appearing on behalf of petitioner submits that factum of the maintainability of the suit was not only in the knowledge of the plaintiff but specifically objected to in the written statement yet the plaintiff chose to continue with such suit. It is only at the fag end of the suit, the application has been filed, and, therefore, amendment cannot be said to be within the amended provision of Order 6 Rule 17 CPC, thus, order under challenge is not sustainable in the eyes of law.

I have heard learned counsel for petitioner and appraised the paper book and of the view that once aforementioned application has been filed particularly when the evidence in this regard had been led, I am of the view that converting of the suit from mandatory injunction into possession and payment of courts fees is with intention to wriggle out of the objection of the maintainability as status of the defendant has been branded as tenant and not of licensee. Had it been of licensee, perhaps suit for mandatory injunction as per the provision under Section 39 of the Specific Relief Act, would have been maintainable.

In view of what has been noticed above, I do not find any merit in the revision petition. Order cannot be said to have without jurisdiction.

No ground for interference is made out.

Accordingly, present revision petition is dismissed.

07.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No