

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

C.R. No.8533 of 2014

Date of Decision.12.07.2016

Saroj Dewan wife of Sh. Anand Sarup Dewan

.....Petitioner

Vs.

Sumit Kumar

.....Respondent

Present: Mr. Jaideep Verma, Advocate
for the petitioner.

Mr. Sandeep Khunger, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The petitioner-defendant is aggrieved of the dismissal of the application for amendment of the written statement seeking incorporation of factum of previous agreement of sale.

Mr. Jaideep Verma, learned counsel appearing for the petitioner submits that the suit is at the preliminary stage and listed for defendant's evidence and therefore, no prejudice could be caused to the respondent-plaintiff as the respondent-plaintiff would have right to cross-examine on aforementioned aspect. The factum of previous agreement of sale could not be incorporated in the unamended written statement despite due diligence and it was only when the affidavit in examination in chief was prepared, the aforementioned fact surfaced and particularly when counsel defending him was changed. Under these circumstances, the

aforementioned application was moved. The amendment sought does not alter the nature of defence, much less, withdrawal of admission and therefore, as the most innocuous, the trial Court ought to have allowed the application subject to the terms and conditions by imposition of costs. In support of his contention, he relies on judgments of Hon'ble Supreme Court in **B.K.N. Pillai Vs. P. Pillai 2000(1) SCC 712; M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd. 2001(8) SCC 97** and judgment of this Court in **Milkha Singh Vs. Parshotam Dass 2007(1) PLR 781** and urges for setting the order passed by the Court below.

Per contra, Mr. Sandeep Khunger, learned counsel appearing for the respondent-plaintiff submits that the amendment does not comply with the statutory provisions of Order 6 Rule 17 CPC as the factum of previous agreement of sale was in the knowledge of the defendant and therefore, the expression “despite due diligence” is not complied with. In support of his contentions, he relies on judgment of the Supreme Court in **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakashdasji N. and others 2006(12) SCC 1** and urges this Court to confirm the finding of the trial Court.

I have heard the learned counsel for the parties, appraised the paper book and the judgments cited at bar and of the view that submission of Mr. Jaideep Verma, Advocate sans merits. It is a matter of record that the previous agreement of sale in question which was sought to be executed has been denied. In my view, pleading qua incorporation of the previous agreement of sale would fetter the defence of the petitioner-defendant. Be that as it may, the petitioner is not able to bring the case within the parameters of provisions of the amended provisions of Order 6 Rule 17

CPC. The expression “despite due diligence” cannot be pressed into service as the factum of aforementioned agreement was in the knowledge of the defendant. As regards the judgments cited by the petitioner-defendant, there is no dispute with regard to that but each case has to be seen on its facts and circumstances. No doubt the parameters of allowing the amendment of plaint and written statement are different but keeping in view facts of present case, ratio decidendi culled out from the judgments of Supreme Court cited by Mr. Jaideep Verma would not be applicable to this case.

I do not find any illegality and perversity in the order passed by the Court below and the impugned order cannot be said to be passed without jurisdiction. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

July 12, 2016
Pankaj*