

Civil Revision No. 1164 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Revision No. 1164 of 2017 (O&M)
Date of decision: 17.2.2017**

Tara Singh

...Petitioner

Versus

Amar Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Deepali Puri, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against impugned order dated 2.1.2017 (Annexure P-4) passed by learned Additional District Judge, whereby application under Order 6 Rule 17 of the Code of Civil Procedure ('CPC' for short), moved by the plaintiff-petitioner, seeking amendment of the plaint during pendency of his first appeal, was dismissed, petitioner has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Facts necessary for disposal of the present revision petition are that agreement to sell dated 27.6.1971 was allegedly executed by defendant-respondent in favour of the plaintiff-petitioner. Petitioner filed suit for specific performance after a long period of 33 years. Suit filed by the petitioner was dismissed. One of the grounds for dismissal of the suit was it being hopelessly time barred. Dissatisfied, plaintiff filed first appeal on

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20.5.2013 against the judgment and decree dated 1.5.2013. During the pendency of the first appeal, plaintiff-petitioner moved application under Order 6 Rule 17 read CPC dated 25.3.2016 (Annexure P-2), seeking amendment in the plaint. The amendment sought by the petitioner was declined by learned appellate court vide its order dated 2.1.2017 (Annexure P-4). Hence this revision petition at the hands of the plaintiff.

Having heard learned counsel for the petitioner at considerable length, after going through record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned order has not been found suffering from patent any illegality or perversity, the same deserves to be upheld. It is so said, because the petitioner has miserably failed to show sufficient cause for allowing the amendment in the plaint, at this belated stage.

A bare reading of the impugned order would show that learned Additional District Judge has considered each and every relevant aspect of the matter before passing the impugned order. The relevant observations made by learned appellate court in para Nos. 4 and 5 of the impugned order, which deserve to be noticed, read as under:-

“The plaintiff filed suit for specific performance against the defendant, real brother, which has been dismissed being not maintainable and time barred. The plaintiff has now filed application for amendment on the ground that defendant and his sons tried to interfere with his possession, regarding which, FIR No.2 dated 7.1.2005 PS Koom Kalan, u/ss 447, 506 IPC was registered against the defendant and others. He alleged that during the pendency of said case, the defendant approached him to compromise the criminal case and agreed to execute the sale deed on the basis of agreement to sell in his favour. Accordingly, the

plaintiff made statement before the court of Leaned Judicial Magistrate 1st Class, Ludhiana and learned Judicial Magistrate 1st Class, Ludhiana vide order dated 12.2.2015 acquitted the accused in view of the compounding of the offences by the complainant/plaintiff of this case. A copy of order dated 12.2.2015 passed by the court of Ms. Mehak Sabharwal, Judicial Magistrate 1st Class, Ludhiana, has been placed on file. The plaintiff has alleged that the defendant did not fulfill his promise and did not execute the sale deed in his favour as per compromise. However, the defendant has denied if he had entered into any such compromise or had agreed to execute the sale deed in favour of the plaintiff. He has categorically stated that there was no mention of compromise in the application for permission to compound the offense, copy of which, has been placed on file.

Learned counsel for the plaintiff/appellant argued that the plaintiff believed in defendant being real brother, but defendant did not keep his promise. However, there is no document on record to corroborate his version. Even in the application for compounding the offence, there is no mention if civil matter i.e. pending case will also be compromised. Rather, the defendant had paid Rs. 30,000/- to the plaintiff as compensation. Moreover, the compromise was effected on 12.2.2015, while the present application for amendment was moved on 25.3.2016 i.e. More than one year after the alleged compromise. Had there been any compromise with the defendant regarding the execution of sale deed on the basis of agreement to sell involved in the present appeal, the plaintiff would not have waited for such a long time and rather should have got the compromise before this court immediately, when he got criminal case compounded. He has not even mentioned as to in whose presence, compromise was

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effected. Thus, in view of necessary details and in view of the facts as discussed above, there is nothing to show as to how the amendment of plaint by adding subsequent events will help in proper adjudication of the case. The filing of application for amendment after such a long delay rather shows that applicant/appellant only wants to delay the matter.”

In fact, bare reading of the application for amendment (Annexure P-2) would make it crystal clear that petitioner did not make any effort to explain the inordinate delay of more than 2½ years, as to why he could not move this application at the time of filing the appeal. Petitioner has also failed to comply with the requirements of law contained in Order 6 Rule 17 CPC, particularly after its amendment vide Act No. 22 of 2002, which was made applicable w.e.f. 1.7.2002. It was not even the pleaded or argued case on behalf of the petitioner that despite due diligence, during the course of trial of his suit before learned trial court, he could not move such an application, seeking amendment in his plaint.

Further, facts which were sought to be introduced by way of amendment in the plaint were very well known to the petitioner-plaintiff right from the day one. It is also not his case that some new facts came to his notice after dismissal of the suit by learned trial court. Having said that, this Court feels no hesitation to conclude that learned appellate court committed no error of law, while passing the impugned order, dismissing the application under Order 6 Rule 17 CPC moved by the plaintiff-petitioner during pendency of his first appeal and the same deserves to be upheld, for this reason also. As noticed hereinabove, provisions of Order 6 Rule 17 CPC had been amended in the year 2002 and the amended provisions cannot be ignored.

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Reverting to the facts of the case in hand, petitioner has failed to make out a case for amendment in his plaint, at this belated stage. He did not even make an effort to explain the inordinate delay of more than 2½ years in filing the application (Annexure P-2). Petitioner failed to exercise due diligence on his part; firstly during the pendency of his suit before learned trial court and secondly, at the time of filing his first appeal, because he filed the application (Annexure P-2) after more than 2 ½ years of filing the first appeal. Under these circumstances, it can be safely concluded that learned Additional District Judge was well justified in passing the impugned order, declining the application of the petitioner during the pendency of his first appeal. Although it is true that first appeal is continuation of the suit, yet, it is equally true that petitioner was duty bound to meet the requirements of law, as contained in the amended provisions of Order 6 Rule 17 CPC. Petitioner failed to show that in spite of due diligence on his part, he was unable to move such an application at an earlier point of time. In this view of the matter, it is unhesitatingly held that learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **L.J.Leach and Co.Ltd., and another Vs. Messrs. Jaidine Skinner and Co., 1957 AIR (SC) 357, State of Kerala Vs. The General Manager, Southern Railway, Madras, 1976 AIR (SC) 2538, Muni Lal Vs. Oriental Fire and General Insurance Co. Ltd, 1996 (1) SCC 90 and Ajendera prasadj N. Pande V. Swami Keshavprakeshdasji N. 2007 (1) RCR (Civil) 481** as well as judgment of this Court in **Shamshad Begum VS. Mohd. Hassan Murtaza and others, 2016 (5) RCR (civil) 987.**

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In fact, keeping in view the totality of facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, present one has not been found to be a fit case for permitting amendment of plaint during pendency of the first appeal of the plaintiff. He also failed to show that in spite of due diligence on his part, he was unable to move such an application at an earlier point of time either before learned trial court or before learned first appellate court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No