

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 111

Civil Revision No.1521 of 2017 (O & M)

Date of Decision: *March 17, 2017*

Avtar Kaur

..... PETITIONER

VERSUS

Vidya Sagar & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. S.S. Gurna, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. Challenge in the instant revision petition, preferred under Article 227 of the Constitution of India, is to order dated February 17, 2017 passed by the Additional Civil Judge (Senior Division), Patiala, whereby an application filed by the petitioner – defendant No.5 under Order VI Rule 17 CPC for amendment of the written statement was dismissed.

2. Brief facts of the case are that plaintiff – respondent No.1 filed a suit for possession by way of specific performance on the basis of an agreement to sell dated April 25, 2008 pertaining to suit property measuring 1 bigha 6 biswa. It was pleaded in the plaint that plaintiff had entered into the aforesaid agreement with Sewa Singh, Amarjit Singh and Avtar Kaur. Sale deed was to be executed on April 09, 2009. It was alleged that vendors had disclosed that there was a civil litigation going on pertaining to the suit

property and sale deed would be got executed when the litigation comes to an end, and further, in case the lis does not end by the April 09, 2009, the date would be deemed to be automatically extended. Plaintiff alleged that he was not intimated that litigation had come to an end. This necessitated the plaintiff to file a suit for possession by way of specific performance.

3. The suit was contested by the defendants by filing written statement. Subsequently, defendant Nos.4 and 5 moved an application under Order VI Rule 17 CPC on the ground that their pleadings in the written statement could not clearly brought out their stand, which is being sought to be clarified by way of filing the aforesaid application for amendment of written statement. It was submitted that defendant Nos.4 and 5 had already discharged the agreement by executing a sale deed dated October 14, 2010 in favour of Raj Mohan wife of Krishan Mohan, who is brother of plaintiff. There was a clause in the agreement to sell that sale deed was to be got executed in favour of the vendee (plaintiff) or any person nominated by him. Thus, on the asking of plaintiff, sale deed was executed in favour of one of his immediate family members. These facts, inadvertently, could not be mentioned in the written statement and accordingly, application under Order VI Rule 17 CPC has been filed for amendment in written statement.

4. While assailing the impugned order, it has been vehemently argued by learned counsel for the petitioner-defendant No.5 that the trial court has failed to correctly appreciate the fact that amendment sought to be made is regarding non-mentioning of certain facts due to inadvertence and oversight. The respondent-plaintiff is not going to suffer any irreparable loss or is going to cause prejudice in any manner in case the proposed amendment is allowed. However, the aforesaid facts of performance of the agreement and execution of sale deed could not be incorporated in the written statement filed by the

but he could not incorporate the same in the written statement. As they were dis-satisfied, so they changed the counsel and disclosed all the facts to him.

5. Learned counsel for the petitioner has further contended that the law with regard to amendment to the pleadings is very liberal and amendment of the written statement sought by the defendant under Order VI Rule 17 CPC is of general nature. In the present case, it is clearly proved on record that the amendment sought by the defendant regarding correction of the written statement is not going to change the nature of the suit.

6. While relying upon the pronouncement of Hon'ble Apex Court delivered in case ***Rajesh Kumar Aggarwal v. K.K. Modi, 2006(2) RCR (Civil) 577***, it has been submitted by learned counsel for the petitioner that the object of Order VI Rule 17 CPC is that the Court should try the merits of the case that comes before it. It should liberally allow all bonafide amendments necessary for determining the real question in controversy between the parties. First part of Rule 17 CPC gives ample discretion to the Court but the second part is imperative and enjoins the Court to allow all necessary amendments. Rule of amendment is essentially a rule of justice, equity and good conscience and power of amendment should be exercised in the larger interest of justice. Procedural obstacles ought not to impede the dispensation of justice, especially, when the basic structure of the suit is not going to be changed, instead of going in second round of litigation. The parties should be allowed to raise all issues connected with the same dispute even by taking cognizance of subsequent events arising during pendency of litigation.

7. While concluding the arguments, it has been submitted by learned counsel for the petitioner that since the proposed amendment is not going to change the nature and character of the suit and further that the respondent – plaintiff is not going to be prejudiced in any way, the amendment

should have been allowed by the trial court which has been wrongly declined while ignoring the basic principles governing the amendment of the pleadings.

8. This Court has weighed the contentions of learned counsel for the petitioner, scanned the impugned order and has come to the conclusion that there is nothing to interfere in the impugned order as the same is absolutely inconsonance with the provisions contained under Order VI Rule 17 CPC and further that it does not call for any interference by this Court as the learned trial court has exercised its discretion in a judicious manner.

9. No doubt, all the rules and procedures are handmaid of justice and the language employed by the draftsmen of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. Undisputably, Order VI Rule 17 CPC deals with the amendment of the pleadings. By Amendment Act 46 of 1999, though this provision was deleted yet it was restored by the Amendment Act 22 of 2002 but with an added proviso to prevent an application for amendment being allowed after the commencement of the trial unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial. A glance at the proviso appended to Order VI Rule 17 CPC makes it crystal clear that to some extent it has curtailed the absolute discretion of the Court to allow amendment at any stage. In the present scenario, if, an application is filed after the commencement of the trial, it is obligatory upon the party concerned to prove that in spite of due diligence, the said amendment could not be sought earlier.

10. 11. In the decision rendered by the Hon'ble Apex Court in ***Saleem Advocate Bar Association, T.N. v. Union of India, 2005(3), RCR (Civil) 530***, it has been urged by the learned counsel for the respondents that the object of proviso is to prevent frivolous applications which are filed to

delay the trial or disposal of the suit. While dealing with Order VI Rule 17 CPC, the Hon'ble Apex Court has observed as under:-

“Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act, 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

11. Adverting to the facts and circumstances of the instant case, it is not in dispute that application for amendment of the plaint was moved by the defendant(s) at the stage when evidence of plaintiff has been completed. The alleged execution of sale deed, which is sought to be incorporated by way of amendment, was very much in the knowledge of the defendant(s) at the time of filing of written statement as well as when the issues were culled out from the pleadings of the parties. The petitioner – defendant has miserably failed to establish that in spite of due diligence, he could not move an application for amendment of the written statement prior to the commencement of the trial. Thus, this Court is of the considered view that the impugned order is absolutely inconsonance with the law applicable to the facts and circumstances of the case in hand. Thus, no interference by this Court is legally and factually justified in the impugned order. . Otherwise also, there is nothing on record to suggest that

knowledge or that in spite of due diligence they could not raise the matter prior to commencement of the trial.

12. In the light of the aforesaid discussion, this Court is of the considered view that the trial court has rightly declined the application for amendment of the written statement. The instant petition being devoid of merits is dismissed whereby impugned order dated February 17, 2017 is upheld.

13. No order as to costs.

March 17, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No