

CR No. 2132 of 2015 (O&M)

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

**CR No. 2132 of 2015 (O&M)
Date of Decision: 30.8.2017**

Lakhwinder Kaur

.....Petitioner

Vs.

Nand Kishore and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S. Bains, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 23.2.2015 (Annexure P-1) passed by the learned trial court, whereby application of the defendants under Section 151 of the Code of Civil Procedure ('CPC' for short), was allowed, permitting amendment in the written statement, plaintiff has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued. Respondents were served. Learned counsel for the respondents put appearance on 12.5.2015 but thereafter, none appeared on behalf of the respondents either on 9.8.2016 or 18.1.2017 or 28.4.2017. Sh. B.S. Jaswal, Advocate, who appeared on behalf of the respondents on 12.5.2015, submits that respondents have taken away brief from him, saying that they would like to engage another counsel. He submits that in this view of the matter, he has got no instructions on behalf

of the respondents and expressed his inability to assist the Court.

Heard learned counsel for the petitioner.

A bare perusal of the impugned order would show that the learned trial court fell in a serious error of law, while passing the impugned order, thereby allowing amendment in the written statement, while exercising its discretionary jurisdiction under Section 151 CPC and that too, after commencement of the trial. Issues in the present case came to be framed by the learned trial court vide Annexure P-6. Although there is no date in the order Annexure P-6, yet next date for which the case was adjourned, was 8.8.2014, which would mean that issues were admittedly framed before 8.8.2014. Defendants-respondents filed their application under Section 151 CPC, vide Annexure P-7 in the month of October 2014, which was opposed by the plaintiff-petitioner vide her reply Annexure P-8.

In view of the amendment brought by the Parliament in Order VI Rule 17 CPC by way of Act No. 22 of 2002 w.e.f. 1.7.2002, adding a proviso, learned trial court would have no jurisdiction to allow the amendment in the written statement after commencement of the trial. It is so said because the application was not filed by the defendants under Order VI Rule 17 CPC. In such a situation, the learned trial court would exceed its jurisdiction, while exercising its discretionary powers under Section 151 CPC, particularly when it has come on record that defendants could not seek an amendment in the written statement at an earlier point of time in spite of exercising due diligence on their part. Having said that, this Court feels no hesitation to conclude that the learned court below exceeded its jurisdiction to pass the impugned order and the same cannot be upheld, for this reason also.

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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 since the impugned order has been found patently illegal, it cannot be sustained.

Accordingly, impugned order dated 23.2.2015 (Annexure P-1) passed by the learned trial court is hereby set aside. Since the suit filed by the plaintiff-petitioner is pending for the last about four years, the learned trial court is directed to decide the same expeditiously.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

30.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No