

CR No. 2091 of 2017

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

**CM No. 7379-CII-2017 in/and
CR No. 2091 of 2017 (O&M)
Date of decision: 30.3.2017**

Mehmood and others

...Petitioners

Versus

Nasruddin and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vishal Singh Chauhan, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

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Applicant seeks preponement of the date of hearing from
25.5.2017 to today, i.e. 30.3.2017.

Learned counsel for the applicant submits that he was
under wrong impression that next date given on 22.3.2017 is
29.3.2017, however, later on, he came to know that case was
adjourned to 25.5.2017. He prays for preponement of date of hearing,
as the next date of hearing before the learned trial court is 31.3.2017.

Prayer seems to be genuine and the same is hereby
accepted. Date of hearing is preponed from 25.5.2017 to today.

CM stands disposed of.

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Present revision petition filed under Article 227 of the Constitution of India, at the hands of defendants, is directed against the order dated 28.2.2017 (Annexure P-1), whereby their application under Order 6 Rule 17 of the Code of Civil Procedure('CPC' for short), was dismissed by the learned first appellate court, declining their prayer for amendment in the written statement.

Heard learned counsel for the petitioners.

It is a matter of record that plaintiffs-respondents filed a suit for possession by way of redemption. Present petitioners-defendants filed their written statement, admitting themselves to be mortgagees on the suit land. It was so recorded in the revenue record. Both the parties to the litigation were granted sufficient opportunities to lead their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have duly proved their case by leading cogent and convincing evidence. Accordingly, suit for possession by way of redemption was decreed by the learned trial court, vide judgment and decree dated 31.8.2016.

Feeling aggrieved, defendants-petitioners filed their appeal. It was during the pendency of their first appeal that defendants-petitioners, who are appellants before the learned first appellate court, moved an application under Order 6 Rule 17 CPC, seeking amendment in their written statement, which has been dismissed by the learned Additional District Judge, vide impugned order dated 28.2.2017.

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A bare perusal of the impugned order would show that each and every relevant aspect of the matter was considered, examined and appreciated in the correct perspective by the learned first appellate court, before passing the impugned order. Application under Order 6 Rule 17 CPC moved by the petitioners vide Annexure P-2, nowhere refers that despite exercising due diligence on their part, petitioners could not raise the plea, which is being sought to be raised by way of amendment. Having said that, this Court feels no hesitation to conclude that since even basic ingredients of Order 6 Rule 17 CPC are conspicuously missing in the present case, learned court below committed no error of law, while passing the impugned order and the same deserves to be upheld.

Once the petitioners have made a clear admission in their written statement filed before the learned trial court and also produced their documentary as well as oral evidence, with a view to prove their pleaded case before the learned trial court, their application under Order 6 Rule 17 CPC before the learned first appellate court, seeking amendment in their written statement, was not at all maintainable. In this view of the matter, it can be safely concluded that the learned first appellate court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of

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the Constitution of India. Since the impugned order has been found duly supported with the sound reasons, the same deserves to be upheld.

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 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.

30.3.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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