

**Civil Revision No.2400 of 2017**

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

Sr. No.114

**Civil Revision No.2400 of 2017  
DECIDED ON: April 19, 2017**

**ABDUL MAJID**

**..PETITIONER**

**VERSUS**

**TALIM KHAN**

**...RESPONDENT**

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

Present: Mr. Munfaid Khan, Advocate,  
for the petitioner.

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**JASPAL SINGH, J.**

Aggrieved against the order dated February 15, 2017  
(Annexure P-5) passed by learned Additional Civil Judge (Sr. Divn.)  
Ferozepur Jhirka, whereby an application moved under Order VI Rule 17  
CPC by the petitioner/defendant has been dismissed with further prayer for

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allowing the amendment of the written statement in Civil Suit titled as “Talim Khan vs. Abdul Majid”.

2. It has been contended by learned counsel for the petitioner while challenging the impugned order that the respondent/plaintiff filed a civil suit for possession by way of specific performance in respect of land measuring 43K 14M situated within the revenue estate of village Mau, Sub Tehsil Nagina, Tehsil Ferozepur Jhirka, District Mewat on the basis of an agreement to sell dated June 19, 2013. But it is the clear cut stand of the petitioner/defendant that neither he entered into the alleged agreement to sell dated June 19, 2013 with the respondent/plaintiff nor received the earnest money as recited therein. He further argued that infact, petitioner/defendant had cancelled another agreement to sell executed by him in favour of Mr. Atik, who is close relative of the respondent/plaintiff. Previously, learned counsel for the petitioner/defendant filed written statement admitting the execution of alleged agreement dated June 19, 2013, but he was not permitted to do so by him. As and when, he came to know about the alleged pleading in the written statement, he changed his counsel. Now, by way of amendment, he intends to withdraw the above said admission/pleading from his written statement, prepared by his previous counsel. While relying upon the pronouncement of the Hon'ble Apex court delivered in case “Panchdeo Narain Srivastava vs. Km. Jyoti Sahay and another, 1983 AIR (SC) 462; 1984 (sup) SCC 594, it has been submitted by learned counsel for the petitioner/defendant that an admission made by the parties can be withdrawn by way of amendment of the written statement. In the aforesaid case, application for amendment of the written statement to

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withdraw an admission was allowed by the learned trial court after satisfying itself that the same was necessary in order to effectively adjudicate upon the dispute and Hon'ble Apex Court held that any interference in the said order was not proper. By way of proposed amendment, petitioner/defendant also intends to withdraw the admission with regard to execution of agreement to sell dated June 19, 2013 and to incorporate the actual facts. The declining of proposed amendment causes a serious prejudice to the petitioner/defendant, whereas the respondent/plaintiff is not going to suffer any loss, in case, the matter in controversy adjudicated upon on merits. At the end, learned counsel for the petitioner pleaded that the impugned order be set aside being not sustainable in the eyes of law by way of acceptance of the instant petition.

3. This court has given a thoughtful consideration to the aforesaid submissions made by learned counsel for the petition and have gone through the impugned order as well as other documents i.e. plaint and written statement available on file.

4. Undoubtedly, by virtue of an application for amendment moved under Order VI Rule 17 CPC, petitioner/defendant intends to withdraw the admission regarding the execution of agreement to sell dated June 19, 2013 in favour of the respondent-plaintiff. The ground for withdrawal is only that his previous counsel incorporated his admission with regard to execution of agreement to sell dated June 19, 2013 without his instructions and further that the contents of the written statement were not read over and explained to him in a simple language. But the aforesaid submissions do not appeal to reason. A glance at the written statement makes it crystal clear that it was

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filed by the petitioner/defendant on September 01, 2016 admitting the execution of agreement to sell as well as receipt of earnest money. He cannot be allowed to withdraw the said admission simply on the ground that the contents of the written statement were not read over and explained to him by his counsel. No action has also been taken against the previous counsel. Even his name has not been disclosed. Had his counsel incorporated the admission with regard to agreement to sell without his instructions, he must have agitated the matter with him. The withdrawal of admission by way of proposed amendment will completely change the nature and character of the defence taken by the petitioner/defendant and would be absolutely inconsistent with the pleadings contained in the written statement. The observations made in case "*Panchdeo Narain Srivastava vs. Km. Jyoti Sahay and another (supra)*" are not applicable to the facts and circumstances of the case in hand. In fact, this Court is not satisfied that the amendment sought is necessary in order to effectively and completely adjudicate upon the matter in controversy. The impugned order carries no infirmity, illegality or perversity and is absolutely in consonance with the settled proposition of law with regard to amendment of the pleadings. As such, finding the instant petition being devoid of merit, the same is dismissed.

5. No order as to costs.

**April 19, 2017**

*Ankur*

**(JASPAL SINGH)  
JUDGE**

**Whether speaking/reasoned  
Whether reportable**

**Yes/No  
Yes/No**