

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

CR No.453 of 2017.

Date of Decision: 23.01.2017.

Vikram Rathee and another

....Petitioners.

VERSUS

Sanjay Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sandeep Verma, Advocate for the petitioners.

SNEH PRASHAR, J.

The petitioners are aggrieved by the order dated 28.10.2016 vide which the application under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC") filed by them for amendment of the written statement was dismissed.

The relevant facts garnered from the impugned order are that a suit for possession by way of specific performance of the agreement to sell dated 11.08.1992 with consequential relief of permanent injunction was filed by respondent No.1 Sanjay Singh against the petitioners and respondents No.2 to 11. The petitioners contested the suit and filed a written statement. Subsequently, the petitioners filed an application for amendment of their written statement alleging that Jagdish Rai Jain (defendant No.9)/ respondent No.8 herein) had brought to their knowledge that earlier the matter was compromised with the plaintiff-respondent No.1 on 18.12.2000.

plaintiff-respondent No.1 and ultimately on 19.04.2001 after the entire amount of compromise was paid to the plaintiff-respondent No.1 he had made a statement in the Court and had withdrawn the suit. They alleged that the original writing of the compromise was not available with them and they could not plead about the same earlier in their written statement.

The application was opposed by respondent No.1-plaintiff. He not only denied any such compromise entered into by him but also submitted that the application had been filed at a belated stage i.e. after he had closed his evidence and defendants had availed 5-6 opportunities for their evidence. The petitioner-defendant No.6 Vikram Rathee had tendered his affidavit in evidence and in that affidavit also he had not mentioned about the alleged compromise dated 18.12.2000. During the cross-examination of the witnesses of the plaintiff-respondent No.1 as well, no suggestion with regard to any such compromise was put to the witnesses.

The submissions made by Mr. Sandeep Verma, learned counsel for the petitioners have been considered.

Learned counsel for the petitioners argued that the facts sought to be inserted in the pleadings by the petitioners by way of amendment are important and necessary for proper adjudication of the case and also to avoid multiplicity of litigation. The copy of the compromise was not in possession of the petitioners because of which no plea with regard to the same could be initially raised in the written statement. Submitting that no prejudice would be caused to the plaintiff-respondent No.1 since he was party to the compromise and its existence was well within his knowledge, learned counsel contended that the application for amendment deserves to

With a view to put an end to the practice of filing application for amendment of pleadings belatedly, a proviso was added to Order VI Rule 17 which reads as under:-

“17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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 trial commences when the Court applies its judicial mind to the rival contentions of the parties, determines the contentious issues between them and calls them to adduce evidence in support of the same. It has been held by Apex Court in **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** that amendment in pleadings cannot be allowed after the trial had commenced. This Court also in **Jaspal Kaur and another vs. Mohinder Singh and others, 2014(9) R.C.R. (Civil) 2935** has held that in view of proviso to Order VI Rule 17 CPC, the amendment of pleadings cannot be allowed unless the party seeking amendment could not have raised the matter before commencement of the trial in spite of exercise of due diligence.

The proviso to Order VI Rule 17 CPC is in a mandatory form.

the trial had commenced had been taken away unless the conditions precedent thereof are satisfied viz the Court must come to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

As far as the contention of the petitioners that they had come to know about the compromise from Jagdish Rai Jain (defendant No.9) is concerned, the facts noticed by learned trial Court are as under:-

“It may be mentioned here that the bare perusal of the alleged compromise deed now sought to be pleaded by seeking amendment of written statement by the applicant/ defendants , makes it evident that even the applicant/ defendant Sh. Vikram Rathee who is defendant no. 6 in this case and defendant no. 7 in the earlier case was the party alongwith Santosh Rathee, Jagdish Rai Jain and Minakshi Kaushik and the writing dated 19.4.2001 is also duly signed by him also. But no whisper of the aforesaid alleged compromise has been made by him either in the written statement and even in the affidavit filed by him now during the stage of his evidence. The pleas taken by the applicant/ defendant Vikram Rathee that he has come to know about this compromise from defendant no. 9 Jagdish Rai, cannot be said to be sustainable as applicant/ defendant no. 6 himself has been shown as signatory to the said alleged compromise deed dated 20.12.2000 and to the writing on that dated 19.4.2001. Moreover, even otherwise too defendant no. 9 had been regularly attending the proceedings of this case since the beginning, so from no stretch of imagination, it can be said that the applicant/ defendants were not in the knowledge of alleged compromise deed now sought to be pleaded by seeking the amendment in written statement. In these premises, the ground taken by the applicant/ defendants about having not raised the plea of compromise earlier on this count that the said document was not in their possession is devoid of force

for the obvious reason that even if the alleged document was not in their possession, there was no impediment for them to at least take the plea about the factum of the alleged compromise in their written statement which is now sought to be incorporated by way of this application. This fact eloquently speaks of lack of bonafide and deligency on the part of applicant/ defendants.”

Learned counsel for the petitioners failed to demonstrate any misreading or misappreciation of any factum by learned trial Court. When existence of the compromise, if any, was well within the knowledge of the petitioners, but they intentionally opted to remain silent about the same in their pleadings, during statement of plaintiff-respondent and his witnesses, and in the affidavit of Jagdish Rai Jain (defendant No.9) that had been tendered in evidence before filing the instant application, it can be said without hesitation that the pleadings now proposed to be raised by way of amendment were in knowledge of the petitioners and were not such which the petitioners could not have raised inspite of due diligence before the commencement of the trial.

For the reasons aforesaid, finding that the impugned order of learned trial Court does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the revision petition being bereft of merit is dismissed.

(SNEH PRASHAR)
JUDGE

23.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**