

CR No. 7145 of 2017 (O&M)

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

**CR No. 7145 of 2017 (O&M)
Date of decision: 12.10.2017**

Hanif and others

...Petitioners

Versus

Hanifa and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Parminder Singh, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition under Article 227 of the Constitution of India, at the hands of defendants, is directed against the order dated 29.9.2017 (Annexure P-5), whereby their application under Order VI Rule 17 of the Code of Civil Procedure ('CPC' for short) was dismissed by the learned trial court, denying amendment in the written statement.

Heard learned counsel for the petitioners.

It is a matter of record, as also observed by the learned trial court in the impugned order itself, that after completion of pleadings of the parties, issues were framed. Both the parties treated their pleadings to be correct. Defendants-petitioners permitted the plaintiff to start leading her

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evidence, who not only started leading her evidence but also concluded the same. Thereafter, defendants-petitioners also started leading their evidence. They have already examined one DW. Under these undisputed facts and circumstances of the case, it cannot be said by any stretch of imagination that the learned trial court exceeded its jurisdiction or not exercised the jurisdiction vested in it, while passing the impugned order. It is so said because if amendment in the written statement would have been permitted by the learned trial court at this belated stage, such an order would have been the order without jurisdiction, thus, the impugned order deserves to be upheld.

It is not even pleaded or argued case on behalf of the petitioners that facts of the case which were sought to be incorporated by way of amendment in the written statement were not in their knowledge. Once the petitioners were well aware about the facts and they had sufficient time at their disposal to incorporate all the facts in their written statement, they cannot be permitted to say, at this belated stage, that despite exercising due diligence on their part, they were unable to seek amendment in the written statement at an earlier point of time. Having said that, this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as the judgment of Hon'ble the Supreme Court in **Ramesh Kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and others, 2012 AIR (SC) 1887**, relied upon by learned counsel for the petitioners is concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the petitioners, being distinguishable on

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facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

In case amendment sought in the written statement is permitted at present stage of the litigation, very purpose of amendment vide Act No. 22 of 2002, whereby Parliament added proviso at the foot of Rule XVII Order VI CPC would stand defeated. While appreciating the object of the abovesaid amendment in CPC and also rightly placing reliance on the judgment of the Hon'ble Supreme Court in para 5 of the impugned order, the learned trial court rightly passed 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 the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and 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

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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.

12.10.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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