

**108/A IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 8706 of 2016
DECIDED ON: JANUARY 18, 2017**

M/S KISAN TRADING CO. & ANR

.....PETITIONERS

VERSUS

PUNJAB AGRO FOOD GRAINS CORPORATION LTD & ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek Salathia, Advocate
for the petitioners.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated September 05, 2016 (Annexure P-1) passed by learned Civil Judge (Jr. Division), Patti whereby, an application filed by the respondents/defendants under Order VI Rule 17 of the Code of Civil Procedure (for short 'Code') for the amendment in the written statement filed in Civil Suit bearing No. 528, dated July 10, 2014 titled as M/s Kisan Trading Co. vs. Punjab Agro and another; has been allowed.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioners that while moving an

application under Order VI Rule 17 of the Code for the amendment of written statement, respondents/defendants did not approach to the court with clean hands and has suppressed the material facts. In fact, after the amendment in the Code amendment in the pleading could be allowed, only before the commencement of trial. However, after the commencement of trial, amendment cannot be allowed, unless the court comes to the conclusion that in spite of due diligence, parties could not have raised the matter before the commencement of trial. The fact of due diligence has to be pleaded by the parties seeking amendment in the pleadings and the court is only to examine the plea and in case, it is found to be bonafide, the amendment could be allowed after the trial had commenced.

While referring to the proceedings of the trial Court, it has further been submitted by learned counsel for the petitioners that an application under Order VI Rule 17 of the Code for the amendment in the written statement moved by the respondents/defendants after about one year of framing of the issues and the commencement of trial. Neither any due diligence have been pleaded nor proved on record, thus allowing the application for amendment in written statement by the trial Court is against the settled principles of law governing the amendment in the written statement.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioners and has also gone through the documents available on file. A perusal of record transpires that an application under Order VI Rule 17 of the Code has been filed by the respondents/defendants for the amendment of written statement after receipt of report of Forensic Science Laboratory to the effect that signatures on the cheques are forged. The said

report was received after the submission of written statement and approval by General Manager (P&A) for a loan and on behalf of Managing Director, Punjab Agro Food Corporation, Chandigarh, which necessitated the amendment of written statement. It was only after the receipt of Forensic report, two criminal cases were registered against the petitioners and others. The proposed amendment reads as under:

“On account of receipt of Forensic report on the cheque to the effect that same are forged, has been received after the submission of the written statement and approval by General Manager (P&A) and on behalf of Managing Director, Punjab Agro Food Corporation, Chandigarh and it has also come on the record that two FIRs registered against the plaintiff and others which has been inquired by the SSP, Tarn Taran holding the accused as culprits and also certified the forged signatures of District Manager of Tarn Taran and same is to be brought on record.”

A glance at the afore-said proposed amendment is suggestive of the fact that it is not going to change the nature of the pleadings or the defence taken in the written statement. Rather, it is a subsequent event and would be helpful to the Court to adjudicate upon the matter in controversy more effectively and judiciously. It is also not going to cause any prejudice to the opposite party. Otherwise also, the law with regard to the amendment in the written statement is liberal than that of the plaint. In this regard, we can have the reference of pronouncements of the Hon'ble Apex Court in *J. Samuel and othersv. Gattu Mahesh & ors; 2012 (1) RCR (Civil) 903* and *Raj Kumar Gurawara (Dead) thr. Lrs vs. M/s S.K. Sarwagi & Co. Pvt. Ltd & Anr;*

2008(4) RCR (Civil) 824.

In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned order. Rather, the same is absolutely in consonance with the legal proposition applicable to the facts and circumstances of the case in hand.

Accordingly, instant revision petition being devoid of merits, is dismissed.

JANUARY 18, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*