

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 8805 of 2017

Date of Decision: 15.12.2017

Kuljit Singh

.....Petitioner

Versus

Sarmukh Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

ANITA CHAUDHRY, J

The petitioner is aggrieved by the dismissal of his application filed under Order 6 Rule 17 CPC seeking amendment in the written statement.

Surmukh Singh, father of the petitioner, had filed a suit for mandatory injunction and for direction to the defendants to hand over vacant possession of the room which was the part of the house owned by him. Defendant No. 2 is the son and defendant No. 1 is wife of defendant No. 2.

The suit was contested and written statement was filed and issues were framed. The trial had commenced when an application seeking amendment in the written statement was made. The defendant wanted to take a plea that they were tenants and he had been paying rent. The trial Court dismissed the application and para 4 of the order reads as under:-

“After hearing the contentions raised by the learned counsel both the parties and going through the case file, I am of the view that the fact with regard to which the defendants wants to make the amendment in his written statement was in his

knowledge at the time when they filed their written statement as the same relates to the period dated 22.9.2012. Nothing has been mentioned by the defendants in their application as to when they came to know about the fact which they wants to amend their written statement. The perusal of the file reveals that the trial had already begin and one of the witness of the plaintiff had already been cross-examined by the learned counsel for the defendant. The present application appears to have been filed only to delay the proceedings of the present suit. Thus, no ground is made out to allow the present application and the same is hereby dismissed.”

In ***Union of India vs. Pramod Gupta (dead) by LRs and Others, (2005) 12 SCC 1***, the Apex Court cautioned that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings.

By reason of the Civil Procedure Code **(Amendment) Act, 2002** (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"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."

It is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

I have heard the counsel for the petitioner at length and I am unable to agree with the submissions. It is not a new fact which the defendants have discovered. It is not a fact that despite due diligence they

could not have pleaded. Had there been any tenancy it would have been pleaded in the written statement in the first place. The trial has commenced and under the amended provisions, no amendment can be allowed after the trial has commenced.

I find no merit in the petition and is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

December 15, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes