

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

Sr. No.119

C.R. No.8983 of 2017

Date of decision on 21.12.2017

Gurmail Singh and another

....Petitioners

versus

Joginder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Munish Gupta, Advocate
for the petitioners.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 07.11.2017 passed by the trial court dismissing the application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short – the Code) through which they had sought to amend their written statement.

After hearing learned counsel for the petitioners and after perusing the record of the case, the facts which have emerged are that the respondents had approached the trial court through a suit seeking therein possession of the suit property after its partition. The petitioners, who were defendants Nos.1 and 2 before the trial court, on 16.04.2012, filed their written statement in which they inter alia stated that the plaintiffs were not the owners of the suit property and that the suit property had in fact been purchased by the petitioners but in the sale deed, only out of respect, the names of the plaintiffs/respondents had been incorporated as purchasers. On

21.04.2014, the trial court framed the issues on which evidence was led and concluded by the plaintiffs on 16.12.2016. Thereafter, the petitioners were given as many as 16 effective opportunities to conclude their evidence but they failed to do so. Instead, on 31.10.2017, the petitioners filed the instant application seeking to amend their written statement to the effect that the suit property which was reflected in the names of the plaintiffs and defendant No.9 in the suit was based on a *benami* transaction.

Learned counsel for the petitioners while admitting the above dates submitted that since the sought amendment was only clarificatory in nature, allowing of the same would not be prejudicial to the interest of either parties and therefore, the trial court had erred in rejecting the same.

The above submission made by learned counsel for the petitioners does not merit a favourable consideration.

Order 6 Rule 17 of the Code 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."

As per the afore-quoted provision of the Code, the Court, at any stage of the proceedings, may allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the

purpose of determining the real questions in controversy between the parties. However, as per the proviso, no application for amendment is to be allowed after the commencement of the trial, unless the Court comes to the conclusion that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

It is not disputed that the petitioners/defendants No.1 and 2 had filed their written statement way back on 16.04.2012; issues were framed on 21.04.2014; the plaintiffs have already concluded their evidence and that after the conclusion of the plaintiffs' evidence, the petitioners/defendants No.1 and 2 have already availed of at least 16 effective opportunities but have yet to conclude their evidence. Thus, the amendment application was only a ploy to delay the decision in the plaintiffs' suit. Even otherwise, what is sought to be pleaded through the amendment application was well within the knowledge of the petitioners at the time when they filed their written statement which was over 5 ½ years prior to the filing of the instant application seeking amendment in the same as it had already been pleaded by them in their written statement that in the sale deed pertaining to the suit property, the names of the plaintiffs and defendant No.9 in the suit, had been mentioned as purchasers of the suit property only out of respect.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

December 21, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No