

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1335 of 2018
Date of decision: 04.07.2018

Ram Niwas

..... Petitioner

Versus

Laxmi Narain

..... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Netrapal Singh, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Challenge in this petition is to order dated 23.08.2017 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Rewari dismissing the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the written statement.

[2] Written statement was filed by the petitioner on 19.02.2014. Issues were framed on the same day. However, application under Order 6 Rule 17 CPC was filed on 01.07.2015 praying for amendment of the written statement on the ground that entire factual position sought to be mentioned in the written statement had been disclosed to the counsel but the same had not been correctly incorporated by the counsel in the written statement. Consequently, there remained a misunderstanding which could be cleared only by making amendment in the written statement.

[3] Plea was that the misunderstanding was discovered later on as the petitioner remained in judicial custody for some time, therefore, could not know that the material defence required to be taken up as specified in

paragraph No.5 of the application had not been mentioned in the written statement.

[4] Learned counsel for the petitioner has not been able to controvert that no evidence whatsoever was led to show that the petitioner remained in judicial custody. It could also not be denied that the petitioner admittedly knew the entire factual position at the time of filing of the written statement and that neither did the petitioner take any action against his counsel for the alleged default, moreover, admittedly, the written statement dated 19.02.2014 contained the signatures of the petitioner as also verification in respect thereto.

[4] In the light of the aforementioned position, the conclusion of the learned trial court that the application was nothing but an unsuccessful attempt to take a somersault from the earlier pleadings filed before the Court especially in view of the fact that the application for amendment had been filed after delay of more than one and a half years after the filing of the written statement and after examination of seven witnesses by the plaintiffs who were cross-examined by the petitioner on the line of defence as given in the written statement does not warrant any interference especially since as per the proviso to Order VI Rule 17 CPC, no application for amendment can 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 the trial.

5. As has been noted above, the written statement was filed on 19.02.2014. Issues were framed on the very same day. However, the application for amendment was filed after more than one and a half years on 01.07.2015. Besides, the entire factual positions as had been sought to be

incorporated in the amended written statement was admittedly to the

knowledge of the petitioner. Moreover, the written statement contained the signatures of the petitioner. In the given set of circumstances, exercise of due diligence is missing. Since the petitioner has failed to prove the exercise of due diligence, therefore, the order passed by the learned trial Court does not call for any interference.

[6] Resultantly, the revision petition is dismissed in limine.

(B.S. Walia)
Judge

04.07.2018
amit

- 1. Whether speaking/reasoned : Yes/No.
- 2. Whether reportable : Yes/No