

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

CR No.2500 of 2016 (O&M)
Date of Decision : 06.12.2018.

M/s Flair Realtors Pvt. Ltd.

...Petitioner

Versus

Subhash

....Respondent

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

Present: Mr. Arun Walia, Senior Advocate with
Mr. Marinal Sharma, Advocate for the petitioner.

Mr. Deepak Achint, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Challenge is to order dated 25.02.2016 (Annexure P/1) passed by the learned Civil Judge (Junior Division), Gurugram, in case No.27 dated 08.08.2012, dismissing the application of the petitioner-defendant for amendment of the written statement so as to incorporate a plea that the civil suit was time barred and, therefore, was liable to be dismissed.

2. The application was rejected on the ground of failure to prove due diligence and not having raised the issue before the commencement of the trial as the proposed amendment was to the knowledge of the petitioner-defendant before the commencement of the trial, besides Section 3 (1) of the Limitation Act, 1963, cast a duty upon the Court to dismiss a suit, appeal or application if made after the prescribed period, although, limitation had not been set up as a defence. In the circumstances, the learned trial Court observed that no prejudice would be caused to the petitioner-defendant if the application was not allowed.

3. Learned counsel for the petitioner contends that law with regard to amendment of written statement is very liberal and, therefore, the application ought to have been allowed.

4. Per contra, learned counsel for the respondent contended that the revision petition does not merit acceptance.

5. I have considered the submissions of learned counsel for the parties.

6. In view of Section 3(1) of the Limitation Act, 1963 which casts a duty upon the Court to dismiss a suit, appeal or application, if made after the prescribed period, although, limitation has not been setup as a defence and no prejudice being caused to the petitioner-defendant despite the application for amendment to incorporate plea of the suit being time barred not having been allowed, as liberty has been granted to the petitioner-defendant to raise the plea of limitation during the course of final arguments, the apprehension of the petitioner is without any basis.

7. In the light of the position as noted above, the revision petition is dismissed though leaving it open to the petitioner-defendant to raise the plea with regard to limitation during the course of final arguments and for the learned trial Court to pass appropriate orders in terms of Section 3(1) of the Limitation Act, 1963, as may be warranted in the facts and circumstances of the case.

(B.S.WALIA)
JUDGE

06.12.2018

rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No