

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

Sr. No.110

**C.R. No.2856 of 2018 (O&M)
Date of decision: 12.07.2018**

Dilbagh Singh and others

....Petitioners

versus

Gurdial Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Brij Mohan Vinayak, Advocate
for the petitioners.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 27.02.2018 (Annexure P-1) passed by the Civil Judge (Junior Division), Amritsar (for short – 'the trial court') through which an application filed by the petitioners/defendants under Order 6 Rule 17 CPC for amendment of their written statement has been dismissed.

The facts which are required to be noticed for adjudicating upon the present petition are that the respondents who were the plaintiffs before the trial court had filed a suit under Section 13 of the Redemption of Mortgages (Punjab) Act, 1913 for seeking a declaration therein that order dated 29.07.2015 passed by the Authorities was null and void and thus, liable to be set aside. A prayer was also made that the redemption application filed by the defendants/petitioners was liable to be dismissed. Consequential relief for restraining the petitioners/defendants from dispossessing the respondents/plaintiffs from the suit property was also

prayed for.

Upon notice, the petitioners/defendants appeared before the trial court and filed their written statement in which they inter alia stated that the registered mortgage deed dated 31.08.1973 was for a consideration of ₹ 6,000/- and for a period of six years. Thereafter, the trial court framed the issues and the plaintiffs led their entire evidence. At that stage, the petitioners/defendants moved an application under Order 6 Rule 17 CPC seeking to withdraw the admission made by them in their written statement with regard to the period of mortgage deed dated 31.08.1973. Such application was dismissed by the trial Court through the order which is the subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the trial court has erred in rejecting the application filed by the petitioners/defendants for withdrawing the admission made by them with regard to the period of mortgage. According to him, the respondents/plaintiffs had tampered with the period of mortgage on the mortgage deed and this fact came to the knowledge of the petitioners/defendants during the course of leading their evidence necessitating the filing of the above application. A judgment of Hon'ble Apex Court in **Sushil Kumar Jain vs. Manoj Kumar and another**, (2009) 14 SCC 38, was cited in support of his contention.

After considering the above submissions made by learned counsel for the petitioners, I am of the opinion that the present petition has no merit.

In para no.1 of the plaint, the respondents/plaintiffs had categorically submitted that the registered mortgage deed dated 31.08.1973 fixed the redemption period at six years. In reply, the petitioners submitted

as under:-

“That para No.1 of the plaint is correct to the extent that Smt. Kanto daughter of Shri Labh Singh was owner of the property in question and she had mortgaged the property in question in favour of Pal Singh, vide registered Mortgage Deed dated 31.08.1973 for a consideration of ₹ 6,000/- for a period of 6 years.”

The above stand taken by the petitioners/defendants was categorical that the registered mortgage deed dated 31.08.1973 was for a period of six years.

It is not just in the instant suit but in another civil suit filed and decided earlier 'Gurdial Singh versus Dilbagh Singh', wherein the petitioners were also the defendants that they had taken a similar plea with regard to the fact that the registered mortgage deed dated 31.08.1973 carried a redemption period of six years. Such suit was decided by the trial court on 14.12.2015 and learned counsel for the petitioners is not in a position to inform the Court whether any appeal against the same was filed by the petitioners. Thus, the plea by the petitioners regarding the period of mortgage had consistently been taken by them not only in the present suit but also in an earlier suit filed against them.

After the respondents/plaintiffs had led their entire evidence, the petitioners/defendants filed an application to withdraw the admission made by them as the same was acting to their prejudice. The application was made by the petitioners too late in the day especially to withdraw a categorical admission made by them which was substantive in nature and the withdrawal of which would have greatly prejudiced the rights of the

respondents/plaintiffs.

In view of the afore observations, the proposed amendment cannot be said to be an 'erroneous' admission as sought to be contended by the petitioners.

The judgment in the case of **Sushil Kumar Jain's case (supra)** cited by learned counsel for the petitioners does not help his case as the facts therein are distinct when compared to the facts of the present case. In that case, an application for seeking amendment to the written statement had been filed at very initial stage of the trial i.e. when neither issues had been framed nor any document had been filed. However, in the present case, the petitioners has filed the application seeking to withdraw their admission after the plaintiffs/respondents had led their entire evidence. Also that the petitioners herein had made a similar admission in an earlier suit between different parties where also they were the defendants. However, in that suit no application was filed by them to withdraw such admission.

In view of the above, no merit is found in the present petition and accordingly, the same is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

July 12, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No