

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3878 of 2017

Date of Decision: 12.09.2018

Ram Chand Jaidka

.....Petitioner

Versus

Gau Rakshak Mandal (Regd.) Grain Market Sangrur

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sanjeev Goyal, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 29.04.2017, passed by the Additional Civil Judge (Senior Division), Sangrur (for short, the Trial Court), dismissing the petitioner's application filed by him under Order 6 Rule 17 CPC seeking amendment in his written statement.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein mandatory injunction to direct the petitioner to vacate the shop as detailed and described in the plaint (for short, the suit premises). According to the respondent, the petitioner was a licensee; the term of the licence had expired and that the petitioner had started to use the suit premises for some other purpose. Therefore, the petitioner's eviction was sought from the suit premises. On being put to notice, the petitioner, who was defendant in the suit, appeared before the Trial Court and filed his

evidence had been led by either party, the petitioner filed an application under Order 6 Rule 17 CPC seeking to amend his written statement on two grounds. Firstly, that he wanted to substitute the word 'lease' with 'rent' wherever so used in the written statement and secondly, to raise a preliminary objection with regard to the jurisdiction of the Trial Court to try the respondent's suit. The application having been dismissed occasioned the filing of the present petition.

Learned counsel for the petitioner submits that the first amendment sought to be made by the petitioner is to substitute the word 'lease' with 'rent' wherever the same finds mention in his written statement as the word 'lease' has been written at some places in the written statement due to a typographical error as at many other places of the written statement the word 'rent' has been used. So far as the second amendment is concerned, learned counsel submits that the petitioner only seeks to raise an objection with regard to the jurisdiction of the Trial Court to try the respondent's suit. According to him since such amendment would go to the root of the matter and was sought to be raised at the initial stage of the trial, the same should have been allowed by the Trial Court.

Learned counsel for the respondent submits that he has no objection, if the petitioner is permitted to substitute the word 'lease' with 'rent' in his written statement. However, he objects to the petitioner being permitted to raise an objection with regard to the jurisdiction of the Trial Court as according to him such amendment would change the nature and complexion of the entire proceedings. It is further submitted that if this amendment is permitted, it will cause delay in the final decision of the suit which was filed in July, 2015.

The use of word 'lease' at certain places in the petitioner's written statement is found to be on account of a typographical error. In view of the afore reason as also the concession given by learned counsel for the respondent, there is no difficulty to permit the first amendment to the petitioner's written statement with regard to substitution of the word 'lease' with 'rent'.

So far as the second amendment with regard to questioning the jurisdiction of the Trial Court to try the respondent's suit is concerned, the same is found to go to the root of the matter and since such amendment is sought to be made by the petitioner at the very initial stage of the suit i.e. even before either party has begun to lead their evidence, this Court is of the view that the same should have been allowed by the Trial Court and accordingly it is so ordered.

The respondent's suit is pending for the last over three years. Therefore, after setting aside the order impugned in the present proceedings and after permitting the petitioner to amend his written statement, as above, the Trial Court is directed to grant 15 days to the respondent to file replication, if any. Thereafter both the parties be granted three effective opportunities each which would include one effective opportunity to lead rebuttal evidence, if any. The Trial Court shall then proceed to dispose of the respondent's suit in accordance with law.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

12.09.2018
sandeep

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No