

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

Sr. No.112

C.R. No.4505 of 2018

Date of decision: 21.08.2018

Narinder Kumar and another

....Petitioners

versus

Subir Dutta Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Yash Dev Kaushik, Advocate
for the petitioners.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 02.07.2018 passed by the Civil Judge (Junior Division), Faridabad, dismissing the petitioners' application filed by them under Order 6 Rule 17 CPC to amend their written statement.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondent filed a petition seeking therein eviction of the petitioners from the suit premises on the ground that he needed the suit property for his son, who is an Advocate, so that he could operate his office from there. On being put to notice, the petitioners filed a detailed written statement in which it was *inter alia* submitted that the respondent had no locus standi to file the eviction petition as he owned various other similar properties in the urban area concerned and that the respondent had also got vacated various other such properties in the urban area concerned from time to time. After the respondent had led his entire evidence, the petitioners filed the present

application seeking amendment of their written statement to include therein description of certain properties which according to them had been owned and possessed by the respondent in the concerned urban area and had later been sold by him. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioners submits that the Trial Court has erred in rejecting the petitioners' application as through the same he was only wanting to give the details of the properties owned and possessed by the respondent in the concerned urban area and later sold by him. According to him, such amendment did not change the nature of his defence and therefore, should have been allowed.

The afore submissions made by learned counsel for the petitioners have been considered but in the same, no merit is found.

Through the amendment application, the petitioners seek to give details of the properties which were similar to the suit property which according to them were owned and possessed by the respondent in the concerned urban area and later sold by him. A perusal of the record reveals that such a defence has already been taken by them in their written statement and that on the basis of the same, the respondent has already been cross-examined at length during the course of which he has been confronted with all the properties referred to in the amendment application.

Even otherwise, once this plea had been taken by the petitioners in their written statement, it is not difficult to conclude that they were aware of such facts at the time of filing of the written statement and that being so, they were required to give all the details of the properties at that time. In the absence of any valid explanation for the delay in giving

such details, they cannot be permitted to raise these issues through an amendment application, especially when the respondent has led his entire evidence. Further, no prejudice is also caused to the petitioners as the law also puts the burden on the respondent to disclose whether he has owned, vacated or sold any property similar to the suit property in the concerned area prior to the filing of the eviction petition and that the petitioners are still yet to lead their evidence and nothing precludes them to lead whatever evidence they have in this regard in accordance with law.

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

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 21, 2018
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No