

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4542 of 2018
Date of decision: 19.07.2018

Gurmeet Kaur and another

..... Petitioners

Versus

Harjit Kaur

..... Respondent

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

Present: Mr. K.S. Rekhi, Advocate for the petitioners.

B.S. Walia, J. (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India praying for the setting aside of impugned order dated 02.07.2018 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Amritsar dismissing the application filed by the petitioners under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the written statement.

[2] Amendment sought was for taking up preliminary objection with regard to maintainability of the civil suit on the ground of the suit being barred by limitation. The learned trial Court dismissed the application on the ground that the suit had been instituted in the year 2014, petitioners/defendants had put in appearance through counsel and filed written statement on 02.02.2016 whereafter issues were framed on 03.03.2016 and respondent/plaintiff concluded her evidence. Even petitioners/defendants evidence had commenced, one defendant witness had

been examined completely, while examination-in-chief of DW2 had been recorded whereafter the application for amendment of written statement to incorporate the plea that the suit was barred by limitation, had been pressed into service. In the aforementioned background, the learned trial Court held that no amendment could be allowed after the commencement of the trial, besides, specific issue i.e. issue No.5 had been framed i.e. “whether the suit of plaintiff is legally not maintainable? OPD”. The learned trial Court concluded that the aforesaid issue having been framed, the same also covered the plea of the petitioners/defendants whether the suit was not maintainable being barred by limitation.

[3] Learned counsel contended that amendment of plaint and amendment of written statement stood on different footings and that application for amendment of written statement was to be considered on a more liberal footing than an application for amendment of the plaint, therefore the amendment prayed for ought to have been granted.

[4] I have considered the submissions of learned counsel for the petitioners. The fact remains that despite having put in appearance and filed written statement on 02.02.2016, besides, conclusion of evidence of the plaintiff and examination of DW-1 completely as also examination-in-chief of DW2, the petitioners/defendants filed the application only thereafter, therefore, failed to establish exercise of due diligence in moving the application before the learned Trial Court. However, I am of the view that notwithstanding the order passed by the learned Civil Judge (Junior Division), Amritsar dismissing the application, the petitioners still have the right as has been observed by the learned Civil Judge (Junior Division), Amritsar in the impugned order itself to take up the issue with regard to limitation in the context of issue No.5. Even otherwise, Section 3 (1) of the

Limitation Act, 1963 is very clear and lays down that a suit, appeal or application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

[5] In the circumstances, the apprehension of the petitioners is without any basis. Resultantly, the impugned order is upheld and revision petition dismissed in the light of the observations made above.

(B.S. Walia)
Judge

19.07.2018
amit

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