

**3N THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R. No.4763 of 2017 (O&M)
Date of Decision: February 06, 2018**

Kritpal

...Petitioner

Versus

Dharam Chand through LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Sanjay Mittal, Advocate
for the respondents.

FATEH DEEP SINGH, J.

The present petitioner-Kritpal filed against the present respondents a suit for possession by way of specific performance. It is during the course of trial, an application under Order VI Rule XVII read with Section 151 CPC was moved on 9.7.2016 by the petitioner seeking amendment of the plaint, however, the same stood dismissed vide impugned order dated 26.7.2017 by the Court of learned Civil Judge, Senior Division Rewari.

The same is impugned before this Court by the unsuccessful plaintiff-petitioner. Upon hearing learned counsel for the parties and perusing the records of the case, it is by no means agitated by any of the sides that the suit was filed on 01.02.2013 and the application for amendment of the plaint was moved on 9.7.2016 which is after more than

three years and five months, after the plaintiff has closed evidence on 20.10.2015 and matter was listed for evidence of the defendants. The applicant-plaintiff wanted to introduce the factum that a notice was served by the defendants to revoke the agreement to sell which could not be earlier mentioned and wanted to challenge the notice in question and, thereby, wants to introduce relief of declaration challenging this notice.

Learned counsel for the two sides readily accepts that under the provision of Limitation Act a person can seek declaration within a period of three years of cause of action. From this, it emancipates as is contended by learned counsel for the respondents and could not be rebutted by learned counsel for the petitioner that application was filed on 19.7.2016 after the period of limitation prescribed for seeking relief of declaration which is three years, and, thus, such a relief certainly is barred by limitation. Learned counsel for the respondents has cited **1997(2) RCR (Civil) 154 T.L. Muddukrishana vs. Smt. Lalitha Ramchandra Rao** which is well enshrined law that an amendment after expiry of period of limitation debars allowing of the same and which could not be controverted by learned counsel for the petitioner. Though, learned counsel for the petitioner has sought to place emphasis on two Single Bench views of this Court **C.R. No.4913 of 2016 Tejwati vs. Virender Kaushik** and **C.R.No.4786 of 2016 Narinder Pal Singh vs. Jatinder Singh** to hammer home his point that amendment needs to be allowed, however, the cited ratios are at much variance and the petitioner cannot take any benefit out of the same. In the present case evidence of the plaintiff has completed and the matter was listed for defence evidence certainly would again put the case back to

square-one, thus, causing immense prejudice to the case of the plaintiff who has completed his evidence and has revealed his defences. In the present case the evidence has already been recorded by the plaintiff and the Hon'ble Apex Court in 2009(1) RCR (Civil) 763 Vidyabai and others vs. Padmalatha and another relied upon by the respondent side held that the Court has no jurisdiction to allow amendment after the evidence. It is not the case as per the own submissions of the leaned counsel for the petitioner that the plaintiff was fully aware of the notice and having been aware of the same did not choose to specifically plead in his pleadings or prove in his evidence and such gross negligence cannot be allowed to be undone by such flimsy pleas. Since the trial has commenced it would certainly be to the disadvantage of the other side and as is so laid down by this Court in its Single Bench view 2012(4) RCR (Civil) 1007 Parbhati Lal vs. Dalip Singh and another .

Learned trial Court has given a well reasoned findings why it does not feel it appropriate to grant relief in question. Besides the fact that even application for amendment of the plaint moved by the applicant does not satisfy the provisions of Order VI Rule 17 sub-Rule-2 CPC so applicable to the three States of Punjab, Haryana and Chandigarh with effect from 01.11.1966. In the absence of specific amendment which the petitioner wants to introduce, including indication of the words, paras which need to be added, omitted or substituted in the original pleadings, and the fact that the same has been moved at belated stage. More so, if the plea is allowed would result in immense prejudice to the other side as it will introduce new cause of action. Together with the delay and latches on the

part of the applicant-petitioner besides introducing fresh cause of action certainly to the mind of this Court is unwarranted.

In the light of the same there is no merit in the present revision petition and the same, thus stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 06, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No