

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

**CR No.6031 of 2015 (O&M)
Date of decision : February 01, 2018**

Nand Singh

..... Petitioner

Versus

Bachan Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. P.K. Ganga, Advocate for the petitioner.

Mr. Sanjiv Kumar Gupta, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 18.08.2015 (Annexure P-8) passed by learned Addl. Civil Judge (Sr. Divn.), Ellenabad, vide which the application filed by the defendant-petitioner under Order VI, Rule 17 CPC, 1908 for amendment of written statement was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the impugned order and the documents placed on file.

It comes out that the plaintiff-respondent had filed a suit for specific performance of a contract for sale agreement dated 06.05.2010

regarding the land measuring 7 kanals 11 marlas, situated in the revenue estate Dhani Assa Singh Wali, Tehsil Rania, District Sirsa. In the written statement, defendant-petitioner simply denied the agreement and claimed that no such agreement was executed. It was also claimed that signatures of the defendant-petitioner were obtained on some blank stamp papers as surety.

It also comes out that in this case, issues were framed on 30.07.2013. None of the parties have led evidence so far when on 06.05.2014, the present application was filed. By way of amendment, now the defendant-petitioner wants to amend para Nos.2, 3, 4 and 7, so as to plead that on 06.05.2010, defendant-petitioner was in need of money. Therefore, he entered into agreement of sale dated 06.05.2010. It is further sought to be pleaded that the agreement for sale dated 06.05.2010 stood cancelled on 05.05.2011 before the date of registration for sale deed, with the consent of both plaintiff and defendant. The plaintiff-respondent also received back earnest money of ₹1,40,000/- from the defendant-petitioner. A writing to this effect was also made in the presence of attesting witness Ishar Singh, which was also signed by both the parties. The said writing of cancellation was made on the back side of the photostat copy of the sale deed dated 06.05.2010, although because the plaintiff-respondent told the defendant-petitioner that he has forgotten to bring the original agreement for sale dated 06.05.2010 with him and he will return back the same. Therefore, it is sought to be pleaded that the said agreement was cancelled by a separate writing dated 05.05.2011. Consequential amendment was also sought to be made in the remaining para Nos.2, 3, 4 and 7.

The trial court while dismissing the application reproduced the provisions of Order VI, Rule 17 CPC, wherein it is laid down that no application for amendment shall be allowed after trial is commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raise the matter before the commencement of the trial. It was stated that defendant-petitioner was never diligent. There was no reason not to put up proper defence as discussed earlier. It was also repelled that the previous counsel did not incorporate the said defence in the written statement.

On behalf of the defendant-petitioner, it is stated that a copy of the agreement was given to the counsel, who did not see the back side of the agreement and simply denied the agreement. Therefore, it was bad drafting on the part of the counsel.

After going through the file, I am of the view that though the issues have been framed but no evidence has been recorded so far. The drafting part is to be done by the counsel and not by the party. In this case, earlier defendant-petitioner had denied the agreement but now he wants to make admission that the agreement was executed and he wants to plead its cancellation. In this way, defendant-petitioner has taken the burden upon himself to prove that agreement was cancelled. He also wants to make admission in favour of the plaintiff-respondent. No prejudice will be caused to the plaintiff-respondent, if such amendment is allowed because now the burden will be shifted upon the defendant-petitioner after he admit the agreement of sale.

I am of the view that said amendment is necessary to arrive at just conclusion and decide the real controversy between the parties. The recording of the evidence has not started, therefore, the said amendment is to be allowed. Consequently, the impugned order dated 18.08.2015 (Annexure P-8) passed by learned Addl. Civil Judge (Sr. Divn.), Ellenabad, is set aside and the proposed amendment is allowed, subject to payment of costs to ₹5,000/-, payable to the plaintiff-respondent.

As such, the present revision petition is allowed.

(KULDIP SINGH)
JUDGE

February 01, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No