

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

CR-6019-2016 (O&M)
Date of decision : 17.01.2018

Kamlesh Gupta **Petitioner**
Versus
Mangat Rai and another **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Binderjit Singh, Advocate for the petitioner.
Mr. Ravish Bansal, Advocate for respondent No. 2.

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 20.8.2016 (Annexure P-6) passed by Civil Judge (Junior Division), Phul vide which application filed by the plaintiff-petitioner, under Order 1 Rule 10 and Order 6 Rule 17 read with Section 151 CPC to implead Pawan Kumar son of Kulwant Rai resident of Kacheri Bazar Rampura Phul, as defendant No. 3 in the suit and also for amendment of the plaint was dismissed.

Heard.

It is necessary to go into the background of the case. It comes out that plaintiff-petitioner has filed a suit for possession by way of

redemption of the shop situated in Kacheri Bazar, Rampura Phul on the payment of mortgage amount of ₹ 7.00 lacs. It was claimed that the said shop was mortgaged with defendant No. 1-Mangat Rai. In the said suit, the defendants appeared. Defendant No. 1 admitted the claim of the plaintiff-petitioner. Defendant No. 2-Rakesh Kumar @ Rajesh Kumar filed the written statement on 17.3.2014 in which he took the plea that in fact one Pawan Kumar was inducted as tenant by Babu Ram father of the plaintiff-petitioner and that Pawan Kumar is in possession of the said shop. Thereafter, the issues were framed on 6.5.2014.

It also comes out that plaintiff-petitioner has filed the affidavit of four witnesses in examination in chief. Thereafter some other proceedings continued for framing of the additional issues and now the case is fixed for recording the evidence of the plaintiff-petitioner. It was at this stage that the present application was filed to implead Pawan Kumar son of Kulwant Rai as defendant No. 3 and also to add *para No. 5-A* in the plaint which is reproduced as under: -

“5-A That defendant No. 1 is real brother-in-law (Sala) of Pawan Kumar s/o Kulwant Rai and defendant No. 2 Pawan Kumar is the son of defendant No. 3. Defendant No. 1 and 3, in collusion with defendant no. 3 have handed over the possession of the shop in dispute to Pawan Kumar-defendant No.3 and now Pawan Kumar-defendant No.3 is running the business of cloth House with the concurrence of Mangat Rai-defendant No. 1. Mangat Rai has handed over the possession of shop in dispute to Pawan Kumar, Therefore, the plaintiff is entitled to get possession of the shop from all the defendants after redemption”.

Learned trial Court has taken the view that all the facts stated in the application are within its knowledge, therefore, the amendment cannot be allowed.

Now the question is whether at the stage when the trial has already commenced and the affidavit of four PWs in examination-in-chief has been filed, amendment could be allowed. The amended provisions of Order 6 Rule 17 of the Code, which read as follows :-

"Order 6- Rule 17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The proviso to the said Order 6 Rule 17 CPC makes it clear that no amendment is to be allowed after the trial has commenced unless the Court come to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of the trial.

Here, in this case, defendant No. 2 in the written statement, filed more than 2 years before filing of the application had pointed that said Pawan Kumar is in possession of the said shop as a tenant. Though it was claimed that he was inducted as a tenant by Babu Ram father of the plaintiff-petitioner.

In the replication, plaintiff-petitioner denied that Pawan Kumar is in possession of the shop. Even in the affidavit, tendered in examination-in-chief, it is not claimed that Pawan Kumar is in possession of the shop in any capacity. All the facts were within the knowledge of the plaintiff-

petitioner when defendant No. 2 filed the written statement. Therefore, after commencement of trial; after two years of framing of the issues, such application is hit by proviso to Order 6 Rule 17 CPC.

Consequently, present revision petition stands dismissed.

(KULDIP SINGH)
JUDGE

17.01.2018
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Whether speaking / reasoned	Yes
Whether Reportable:	No