

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

CR No. 6379 of 2018
Date of Decision: 21.09.2018

Ashok Kumar

.....Petitioner

Versus

V.K. Jain and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Hitesh Ghai, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 20.07.2018, passed by the Civil Judge (Junior Division), Ludhiana (for short, the Trial Court), through which an application filed by the petitioner under Order 6 Rule 17 CPC seeking therein to amend his written statement has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in October, 2015 respondent No.1 filed a suit seeking therein possession of a shop/room situated at Chhowni Mohalla, near Deepak Cinema Chowk, Ludhiana, which was detailed and described in the head note of the plaint (for short, the suit property). Recovery of damages by way of mesne profits as also permanent injunction restraining the defendants in the suit from making any additions/alterations and raising any construction in the suit property were also sought. On being put to notice, the petitioner, who was defendant No.1 in the suit, appeared before the Trial Court and filed his written statement

through which he inter-alia stated that respondent No.1's suit was not maintainable. Thereafter, the Trial Court framed the issues, on which, respondent No.1/plaintiff led his entire evidence. When the petitioner/defendant No.1 was in the midst of leading his evidence, an application was filed on his behalf under Order 6 Rule 17 CPC to amend his written statement. Such application was dismissed by the Trial Court, occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

It is not disputed that respondent No.1 had filed his suit way back in October, 2015. Upon notice, the petitioner, who was defendant No.1 in the suit, appeared before the Trial Court and filed his written statement in which the claim set up by respondent No.1 was denied. It was further stated therein that respondent No.1's suit was not maintainable. On the pleas raised by the parties to the suit, the Trial Court framed issues which included the issue with regard to the maintainability of respondent No.1's suit. The onus to prove this issue was put on the petitioner. After respondent No.1 had led his entire evidence in the affirmative and while the petitioner was in the midst of leading his evidence, an application was filed on his behalf under Order 6 Rule 17 CPC to amend his written statement to the effect that respondent No.1's suit was not maintainable as the relief claimed by him through the instant suit could and should have been claimed by him in execution proceedings initiated by him prior to the filing of his suit, for executing a decree dated 24.03.2000, which had been passed in a Civil Suit preferred by him against one Om Parkash.

Reference to the execution proceedings which is now sought to be made by the petitioner through the amendment application had been

initiated by respondent No.1 for execution of the afore referred decree dated 24.03.2000. These execution proceedings had resulted in the execution of a sale deed dated 26.12.2013 and thereafter, the entire proceedings came to an end on 19.09.2015 i.e. prior to the filing of the present suit and obviously much prior to the filing of the written statement by the petitioner. It is admitted by the petitioner that he was well aware of the aforesaid execution proceedings prior to the filing of the present suit. Therefore, this plea could and should have been taken by the petitioner in his written statement. Thus, due diligence on the part of the petitioner is found lacking. Resultantly, the sought amendment cannot be allowed as the same is squarely hit by the proviso to Order 6 Rule 17 CPC.

Even otherwise, no prejudice would be caused to the petitioner as the issue of maintainability of the suit has already been raised by him in his written statement and an issue in that regard has also been framed by the Trial Court. The petitioner is in the midst of leading his evidence and therefore, he would be at liberty to produce and prove whatever evidence he can, in accordance with law, to show that respondent No.1's suit is not maintainable.

In view of the above, no error is found in the order impugned in the present proceedings.

Dismissed.

(DEEPAK SIBAL)
JUDGE

21.09.2018
sandeep

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