

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7045 of 2017 (O&M)

Date of decision:20.11.2018

Dewan Singh Khaira

... Petitioner

Vs.

Balbir Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amardeep Singh Gill, Advocate
for the petitioner.

Mr. Yagyaang Ajay, Advocate for
Mr. G.S.Madaan, Advocate
for the respondent.

AMIT RAWAL J.

The present revision is directed against the order dated 15.09.2017 (Annexure P-14), whereby, an application submitted by the petitioner-defendant for amendment of the reply to the application under Order 33 Rule 1 of Code of Civil Procedure, filed on behalf of the respondent-plaintiff, has been rejected.

Mr. Amardeep Singh Gill, learned counsel for the petitioner-defendant submitted that the respondent-plaintiff had filed an application under Order 33 Rule 1 CPC for permission to sue as an indigent person in respect of suit for maintenance to the tune of ₹30,000/- per month by creating a charge over the property, referred to in the plaint, on the various grounds.

It was alleged that plaintiff was legal wedded wife of the petitioner-defendant as the marriage was solemnized on 15.03.1971. The respondent had gone to U.K where he solemnized the second marriage. He was drunkard, habitual gambler, thus, failed to provide the maintenance.

The aforementioned application was opposed by the petitioner on various grounds including the concealment. Even the respondent had also filed the suit for possession to the effect that she alongwith her son was owner in possession of the suit property in equal share on the basis of the Will dated 11.06.1987.

During the pendency of the suit, a compromise dated 17.09.2014 (Annexure P-4) was entered into between Kanwar Sahab, Balbir Kaur and Diwan Singh-petitioner, through attorney, whereby, respondent and her son Kanwar Sahib Singh received a sum of ₹1,07,00,000/-. Even the application dated 17.09.2014 (Annexure P-5) for withdrawal of the suit was filed which was permitted to be dismissed as withdrawn. The respondent, vide affidavit dated 17.09.2014 (Annexure P-6) acknowledged the compromise but asserted that filing of application is nothing but an abuse.

However, during the pendency of the aforementioned suit, necessity arose to seek amendment of the reply to incorporate the certain facts extracted in the impugned order. The aforementioned facts would not alter or change the nature of the reply but would help the Court in adjudicating the lis between the parties and thus, prayed for allowing of the

petition.

Mr. Yagyaanj Ajay, learned counsel appearing on behalf of the respondent supported the impugned order by saying that the intention to move an application was to delay the adjudication of the application under Order 33 Rule 1 CPC as the issues in the aforementioned application had already been framed. The amendment is neither essential nor necessary in the reply and prayed for dismissal of the petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the impugned order is not sustainable as the same suffers from illegality and infirmity. The amendment sought to be incorporated has been extracted in the impugned order which reveals that it is explanatory as after certain paragraph, word to word was sought to be added, certain explanation of transfer of the property and dis-entitled to decree of maintenance. It would not alter the stand taken in the reply. The procedural of law is handmade of justice and should not be denied on technicalities. The impugned order is set aside. The amendment in the reply to the application under Order 33 Rule 1 CPC is allowed subject to costs of ₹5,000/-.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 20, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No