

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7689 of 2016
Date of decision:26.04.2018

Joginder Pal Singh

... Petitioner

Vs.

Kulwant Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Harshit Jain, Advocate
for respondents No.1 to 3.

AMIT RAWAL J. (Oral)

The petitioner-defendant is aggrieved of the impugned order dated 28.10.2016 (Annexure P-6), whereby, an application for amendment of the written statement at the stage when the suit was listed for plaintiffs' evidence, has been dismissed.

Mr. Rajinder Goyal, learned counsel appearing on behalf of the petitioner submits that in third line of paragraph 5 of the original written statement, it was mentioned that petitioner-plaintiff had sold about 54 kanals 18 marlas and left with land measuring 3 kanals 9 marlas and thus, the aforementioned area was required to be rectified as the land sold was 54 kanals 7 marlas and area left was 4 kanals. The details of particulars of land were sought to be incorporated in an elaborate manner under preliminary

objection 9 but the same has been declined erroneously by the trial Court. No harm and prejudice would be caused to the respondent-plaintiffs as they would be able to file the amended replication and cross-examine the witnesses of the defendant.

Mr. Harshit Jain, learned counsel appearing on behalf of respondents No.1 to 3 submits that as per the amended provisions of Order 6 Rule 17 CPC, after framing of the issues, the defendant cannot be permitted to amend the written statement. Factum of alleged error was in the knowledge of the defendant and therefore, there was no compliance of expression “despite exercise of due diligence” and thus, urges this Court for dismissal of the revision petition as there was no illegality and perversity in the impugned order.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Goyal, for, trial of the suit is still at the stage of plaintiffs' evidence. Since the aforementioned amendment is clarificatory and to bring the actual facts on record which would help the Court in adjudication of the controversy between the parties to the lis, the respondent-plaintiffs can be permitted to file the amended replication. Even witnesses of the defendant can be subjected to cross-examination. Moreover, the amendment would not only be sufficient to be proved on record by way of pleadings but by independent evidence, if any.

Since the application was moved belatedly, I deem it appropriate to allow the same by imposing costs upon the petitioner-

defendant. All these factors are required to be adjudicated by the trial court. The amended written statement shall be filed within a period of 15 days from the date of receipt of certified copy of this order and amended replication, if any, one week thereafter.

Accordingly, the impugned order is hereby set aside. Revision petition stands allowed subject to costs of ₹10,000/- to be paid to Mr. Harshit Jain, Advocate.

(AMIT RAWAL)
JUDGE

April 26, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No