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

**CR No.7686 of 2018
Date of Decision: 28.11.2018**

Harjit Kaur and another

Petitioners

Versus

Manjit Kaur and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manipal Singh Atwal, Advocate
for the petitioners.

Mr. K.S. Dadwal, Advocate
for the respondents.

AVNEESH JHINGAN, J (Oral):

The order dated 09.10.2018 passed by Civil Judge (Jr. Division), Hoshiarpur (hereinafter referred to as 'trial Court') dismissing the application under Order VI Rule 17 of Code of Civil Procedure, 1908 (CPC) has been assailed in this civil revision petition by the petitioners/ defendants (No. 7 and 8) (hereinafer referred to as 'petitioners').

Prem Singh was an Assistant Sub-Inspector in Punjab Police. He died on 07.08.2013. Manjit Kaur, respondent No.1 (in the present petition) filed an application claiming pensionary benefits in respect of late Prem Singh. She claimed that she is the wife of the deceased and their marriage was solemnised on 14.10.1992. During

the pendency of the application, Harjit Kaur, petitioner No.1 raised objection before the police authorities stating that she is the legally wedded wife of the deceased. She married to the deceased on 02.03.2005, hence, the retiral benefits should be released to her.

The police authorities refused to release the retiral benefits stating that both the applicant and the objector should approach the competent Court for appropriate remedy.

Thereafter, in the year 2013, Manjit Kaur filed a suit for declaration at Hoshiarpur whereas Harjit Kaur filed the same in the year 2015 at Ajnala. Subsequently, on filing transfer petition, both the suits were clubbed together at Hoshiarpur. In the suit filed by Harjit Kaur, Manjit Kaur was impleaded as a party, whereas *vice-versa* was not done. In the suit filed by Manjit Kaur, Harjit Kaur was impleaded as a party on 16.05.2017. She filed the written statement. Pleadings were completed and evidence was adduced by both the parties. At that stage, the petitioners moved an application under Order VI Rule 17 of CPC seeking amendment of the written statement. The said application was dismissed vide order dated 09.10.2018 by the trial Court stating that the application has been moved at a belated stage and the applicant (petitioner No.1) was not able to show as to on what date she attained knowledge of the fact, which warranted amendment in the written statement.

Aggrieved of dismissal of application, the present petition is filed.

Learned counsel for the petitioners contends that after

filing of the written statement, petitioners came to know that Manjit Kaur was earlier married to one Nirmal Singh and without having a valid divorce, she married Prem Singh (deceased). He contends that in her examination-in-chief, petitioner No.1 stated the above fact on 09.07.2018. He further submits that Nirmal Singh, alleged husband of Manjit Kaur, was examined as DW4 whereby he admitted the fact that Manjit Kaur was married to him and that their marriage was solemnized on 21.02.1982, they never took divorce. In these circumstances, the amendment of written statement was warranted. Learned trial Court erred in dismissing the application on the ground of delay.

Learned counsel for the respondents relies upon the proviso to Order VI Rule 17. He states that the petitioners have failed to show that inspite of due diligence, the matter could not have been raised prior to commencement of trial. He further states that on 01.05.2018, in the cross-examination of Manjit Kaur, question was asked to Manjit Kaur that whether she was married to Nirmal Singh. He argues that the date of knowledge can be taken from May, 2018 and no application was moved till September, 2018. He further relies upon the statement of Nirmal Singh where he admitted the marriage with Manjit Kaur but further deposed that after 10 days of marriage she eloped and thereafter he re-married and is having children.

The case in hand has a checkered history. An employee of police force is alleged to have married twice. Manjit Kaur who applied for release of retiral benefits, is alleged to have already been

married to one Nirmal Singh in the year 1982. She claims that she married the deceased on 14.10.1992.

On the other hand, Harjit Kaur claims to be legally married wife of the deceased Prem Singh and it is stated that marriage was solemnized on 02.03.2005. It is worthwhile to note that Manjit Kaur, inspite of having knowledge that an objection was raised by Harjit Kaur before the police authorities against the release of retiral benefits to her, she never impleaded Harjit Kaur as a party to the suit. Whereas in the suit filed by Harjit Kaur, Manjit Kaur was a party. Harjit Kaur filed the suit in the year 2015. It came to the notice of Manjit Kaur that another litigation is pending in Ajnala vis-a-vis retiral benefits yet Harjit Kaur was never arrayed as a party till 2017.

The fact that Manjit Kaur was married to Nirmal Singh also, was in the exclusive knowledge of Manjit Kaur herself. It is virtually impossible to prove the exact date of knowledge to Harjit Kaur vis-a-vis this fact.

Order VI Rule 17 of CPC is quoted below:-

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.

From the perusal of Order VI Rule 17 CPC, it is evident that alteration or amendment of pleadings should be allowed for the purpose of determining the real question in controversy between the parties. No doubt, the proviso makes an exception that an application for amendment shall not be allowed after the commencement of the trial, until and unless, the Court is satisfied that the party concerned inspite of due diligence, could not have raised the matter before commencement of trial.

In the present case, the real question to be determined in both the suits is as to who (Manjit Kaur or Harjit Kaur) is legally wedded wife of the deceased and is entitled to retiral benefits. There is no quarrel with the proposition that substantial justice should prevail when pitted against technicalities.

Keeping in view the facts and circumstances of the case, it would be in the interest of justice that an amendment to the written statement is permitted and thereafter the controversy involved be decided by the trial Court.

The civil revision petition is allowed subject to costs of Rs.5,000/-. Since the suit is pending since 2013, trial Court should try to decide the suit as expeditiously as possible.

**[AVNEESH JHINGAN]
JUDGE**

November 28, 2018

pankaj baweja

1. Whether speaking/ reasoned	:	Yes/ No
2. Whether reportable	:	Yes/ No