

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

C.R. No.7778 of 2017

Date of Order: 09.01.2018

Lajja Ram

....Petitioner

Versus

Jaik Ram

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. M.K. Garg, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through the instant petition, challenge has been laid to the order dated 26.4.2017 of the learned trial Court, dismissing the application of the petitioner-defendant under Order 6 Rule 17 CPC.

Put pithily, the respondent-plaintiff/Jaik Ram filed a suit for specific performance of agreement to sell dated 18.3.2016 against the petitioner, alleging that despite the payment of full and final sale consideration of Rs.8 lacs, he did not execute the sale deed in his favour though he was still ready and willing to perform his part of contract. The petitioner appeared and filed written statement, denying each and every averment of the plaint of the respondent-plaintiff. He categorically alleged in paras 2 & 3 of his written statement that he never entered into any such agreement to sell dated 18.3.2016 with the respondent-plaintiff nor had received any sale consideration from him. The story putforth by the

respondent-plaintiff was false one just to harass him.

The petitioner thereafter filed an application under Order 6 Rule 17 CPC for amending his written statement, whereby he intended to admit the execution of the agreement to sell in question as also his signatures thereupon. He also intended to admit some part payment made by the respondent-plaintiff to him.

Said application after due contest from the respondent-plaintiff was dismissed by the trial Court vide the impugned order dated 26.4.2017.

Learned counsel for the petitioner contends that by amending his written statement, the petitioner wants to clarify the entire controversy for effective adjudication as he intends to admit the agreement to sell dated 18.3.2016 duly executed by him and his signatures thereupon as also the receipt of part sale consideration. The amendment sought was not going to change the nature of suit and even no prejudice is going to be caused to the respondent-plaintiff. The earlier written statement filed by the counsel for the petitioner was without his instructions. As soon as the petitioner came to know that true facts were not pleaded by his previous counsel in the written statement, he changed his counsel and got moved an application for amendment of his written statement to bring true facts on the record. In support, learned counsel has relied upon judgments of Hon'ble Supreme Court reported as **Usha Balashaheb Swami & Ors Vs. Kiran Appaso Swami & Ors 2007 (2) RCR (Civil) 830** and **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others,**

2010 (1) RCR (Civil) 27.

I have given my thoughtful consideration to the averments made by learned counsel for the petitioner.

Undisputedly, in the initial written statement, the petitioner outrightly denied the very execution of the agreement to sell by him in favour of the respondent-plaintiff and his signatures thereupon. He also denied the receipt of any sale consideration or part payment thereof from the respondent-plaintiff. Thereafter, he awakened out of deep slumber and moved application under Order 6 Rule 17 CPC for amendment of his written statement, whereby he intended to admit the agreement to sell dated 18.3.2016 and receipt of part sale consideration quite, contrary to his earlier stand of non-execution of any agreement to sell in favour of the respondent-plaintiff and receipt of any part sale consideration.

Since the averments now sought to be taken by the petitioner in the amended written statement are quite contrary to his earlier stand, therefore the same amounts to making a somersault to the utter surprise of the respondent-plaintiff.

I have no dispute with the law laid down in the above referred authorities relied upon by learned counsel for the petitioner, but with due respect would like to add that an amendment can be allowed if some clarification is to be made in the earlier pleadings. In the instant case, since the petitioner has outrightly denied the very execution of the agreement to sell by him in favour of the respondent-plaintiff, therefore, no question arises for any clarification in the same.

I have carefully gone through the impugned order. The trial Court has rightly exercised its discretion and thus this Court under revisional power is not inclined to interfere with the same.

Dismissed.

January 09, 2018
manoj

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No