

CR No.9150 of 2017

{1}

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

**CR No.9150 of 2017
Date of decision:16.02.2018**

Jaswant Singh

... Petitioner

Vs.

Jaspal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Sidhu, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Notice of motion.

Ms. Harpreet Kaur Dhillon, Advocate accepts notice on behalf
of the respondent.

The present revision petition is directed against the impugned
order dated 22.11.2017 (Annexure P7 and Annexure P-8), whereby, the
applications under Order 6 Rule 17 read with Section 151 of Code of Civil
Procedure (in short 'CPC') seeking amendment of the plaint and main
application filed under aforementioned provisions of CPC, have been
dismissed.

Mr.G.S.Sidhu, learned counsel for the petitioner submitted that
petitioner-plaintiff instituted a suit seeking specific performance of the
agreement to sell dated 14.11.2006. The said suit was decreed, vide ex parte
judgment and decree dated 14.03.2008. However, the sale deed was also
executed but the respondent-defendant moved an application under Order 9

Rule 13 CPC which was allowed, vide order dated 13.07.2005 and de-novo of trial was ordered to be conducted.

During the stage of plaintiff's evidence, an occasion arose to move an application dated 09.11.2015 under Order 6 Rule 17 CPC, whereby, amendment in para 3(iii) of the plaint was sought to be amended, i.e., instead of ₹34,00,000/-, it should have been ₹3,00,000/- and also a fact that earlier there was an agreement to sell dated 25.04.2006 which was not noticed by the petitioner on the ground that he was confined to the jail and was not able to brought this fact to the notice of the Court or lawyer.

Occasion arose to move another application dated 10.01.2017 for amendment of the application on the ground that due to inadvertence/clerical mistake, figure in paras 2 and 3 of the application was wrongly mentioned as ₹33,00,000/- instead of ₹31,00,000/-. Similarly, date of agreement was wrongly mentioned as 25.11.2006 instead of 25.04.2006. Both the applications have erroneously been dismissed. The parameters for amendment of the plaint and written statement are totally different. The trial Court ought to have adopted the pragmatic approach for allowing the applications, thus, there is illegality and perversity in the orders under challenge.

Ms. Harpreet Kaur Dhillon, learned counsel for the respondent-defendant submitted that the aforementioned agreement to sell dated 14.11.2006 was a result of fraud for which an FIR had already been lodged, wherein, the petition-plaintiff had been convicted. She further submitted

that plaintiff had a different cause of action *vis-a-vis* agreement to sell dated 25.04.2006 sought to incorporated by way of amendment and also with regard to figure aforementioned. All these facts were in the knowledge of the trial Court while dismissing the applications, thus, there is no illegality and perversity in the orders under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. G.S.Sidhu, for, concededly, an ex parte decree was passed on 14.03.2008. The application under Order 9 Rule 13 CPC was moved by the respondent-defendant which was contested by the petitioner-plaintiff and all these facts were in his knowledge and nothing contrary surfaced, therefore, there was no compliance of the expression “*due diligence*” which is mandatory requirement of law as per the amended provisions of Order 6 Rule 17 CPC, i.e., the amendment caused in the year 2002.

In view of the aforementioned observations, I am of the opinion that trial Court has rightly dismissed the applications. No ground is made out for interference in the impugned orders.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 16, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No