

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 221

CR-1921-2017 (O&M)

Date of decision : 10.09.2019

Pawan Kumar Bhalla

..... Petitioner

VERSUS

Dharam Pal Bhalla

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Gaurav Sharma, Advocate, for the petitioner.

Mr. Ravinder Rana, Advocate, for
Mr. Samir Rathaur, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 02.03.2017, passed by the Civil Judge (Junior Division), Chandigarh (for short, the Trial Court), dismissing an application filed by the petitioner under Order 6 Rule 17 CPC through which he had sought to amend his written statement.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein the petitioner's eviction from House No. 1739, Main Bazaar, Mani Majra, UT, Chandigarh. Inter alia, the case set up by the respondent was that one Gian Parkash Bhalla was having five sons namely Chand Pal, Yash Pal, Rajinder Pal, Dharam Pal (respondent) and Pawan Kumar (petitioner). The said Gian Parkash Bhalla executed a Will through which he distributed his assets amongst his aforesaid sons. Besides other properties, the petitioner was given House No. 1740 whereas the respondent was given House No. 1739 (both houses in the Main Bazaar, Mani Majra, UT, Chandigarh). Mutation of the aforesaid properties was also done. The petitioner, who was in occupation of House No.1739 comprises of ground, first and second floors. On the ground floor, the petitioner has a shop by the name of Pawan Kiryana Shop and he is residing with his family in the first and

second floors. Since such property was owned by the respondent, he requested the petitioner several times to vacate the same but when the petitioner failed to do so, the respondent filed the instant suit.

On being put to notice, the petitioner, who was the sole defendant in the suit, appeared before the Trial Court and filed his written statement through which he denied the respondent's claim. In addition, a counter claim was also filed. On the dispute between the parties, the Trial Court framed the issues. After the respondent led his entire evidence and the petitioner had been granted several opportunities to lead his evidence, an application was filed by the petitioner under Order 6 Rule 17 CPC to amend his written statement. Such application was dismissed by the Trial Court through the order under challenge in the present petition.

A perusal of the application filed by the petitioner under Order 6 Rule 17 CPC reveals that through the same, the petitioner intends to make the following amendments in his written statement: -

- i. That every week material was purchased from the Mandi Sector 26, Chandigarh for an amounting to Rs.70 to 80 thousand of karyana Business and some items were purchased locally from Manimajra of Karyana Business. Sometimes goods were brought by the defendant and sometimes goods were brought by plaintiff Dharampal Bhalla.
- ii. That every week material was purchased from Ambala for an amounting to Rs.1,50,000 to Rs.2,50,000/- per week of cloth business and some times goods were purchased by defendant and some times goods were brought by Sh. Dharam Pal and sometimes by Sh. Rajiv Bhalla son of Sh. Chand Pal Bhalla.
- iii. That sale of Karyana business is Rs.1.5 lacs to 2.5 lacs per week and all sale amount is kept and retained by the Dharampal.
- iv. That sale of cloth business is Rs.3 lacs to 4 lacs per week and all sale amount is kept and retained by the Dharampal.
- v. All the books of Accounts of the Karyana as well cloth business was written and kept by the Dharampal ever if the sale of the business was collected by Rajiv Bhalla in presence of defendant while doing work in shop.
- vi. That son of the Dharampal namely Sh. Amit Bhalla is well settled in the business and running a cloth business in the shop No. 1741, Main Bazaar, Manimajra, UT, Chandigarh and had already been married and blessed with son namely Aarav Bhalla and spending a peaceful and happy married life.

- vii. That Sh. Dharmपाल Bhalla had purchased a house bearing No. 1731 in the name of his wife namely Smt. Santosh Bhalla and his son namely Amit Bhalla for an amount of Rs.7.5 lacs from his elder brother namely Yash Bhalla.
- viii. That Sh. Dharmपाल Bhalla had spend an amount of Rs.3.5 lacs in the year 1991 on the purchase of shop No. 1741, Main Bazar, Manimajra, UT, Chandigarh which he had earned from the Karyana Business Profits.
- ix. That Sh. Dharmपाल Bhalla spent an amount of Rs.4 lacs on the Renovation/construction of House No. 1731, Second Floor as when it was purchase it was constructed up to Ground Floor and One Room on the 1st Floor.
- x. That Sh. Dharmपाल Bhalla had spent an amount of Rs.7.5 lacs on the marriage of his son namely Amit Bhalla and huge reception was given.
- xi. That Sh. Dharmपाल Bhalla had given a Donation amounting to Rs.2 lacs for admission of her Daughter in BEd course to the institute at Barnala.
- xii. That Sh. Dharmपाल Bhalla had spent amounting to Rs.4 lacs on the treatment of his daughter in law for her treatment at Gokul Hospital, Panchkula. Dharmपाल Bhalla had also paid a sum of Rs.5 lacs to Sh. Rajiv Bhalla son of Sh. Chand Pal Bhalla for his 1/3rd share of his profit in the cloth business in the year 2002.
- xiii. That all the above said amounts besides day to day expense and education of his both the children, has been spent by Dharmपाल Bhalla from the earning of the Joint Business of Karyana and cloth Business run by Sh. Pawan Kumar and Sh. Dharmपाल Bhalla from 1975 to 2007 and 1992 to 2007 Karyana and cloth business respectively, as all the sale amount was kept and retained by the Dharmपाल Bhalla and all the books of the accounts were maintained by the Dharmपाल Bhalla.
- xiv. That Dharmपाल Bhalla had never paid a rent for using his portion i e. House No. 1740 1st and 2nd floor and using the Ground floor of shop No. 1741, Main Bazar, Manimajra, UT, Chandigarh.
- xv. That shop No. 1740 was given on Rent by the father of the defendant to Sh. Krishan Lal Bhatia and Rent Agreement was made between Sh. Chand Pal Bhalla (elder brother of the undersigned) and Sh. Krishan Lal Bhatia for an amounting to Rs.85/- in the year 1972.
- xvi. That all the rent were received by Smt. Devki Rani wife Gian Parkash and Devki Rani was living with the Dharmपाल Bhalla.
- xvi. That earlier Sh. Dharmपाल Bhalla said that he would give his due share of profits in the joint business of Karyana and Cloth business. That is why case was filed in the Court to vacate the shop the No. 1740 from the tenant Sh. Krishan Lal Bhatia as Dharmपाल Bhalla was ready to give the share of profits from the joint business of karyana and cloth business to defendant Pawan Kumar. But after the end of the year 2007 Dharmपाल shows his inability to pay the profits of the joint business of the karyana and cloth business saying that he requires a very huge amount on the marriage of his daughter namely Pooja Bhalla and his son namely Amit Bhalla, as both of them are in marriageable age. Thereafter Dharmपाल has given an affidavit in the year March 2012 duly prepared by himself duly attested from the Notary Chandigarh to retain the shop No. 1739, as he failed to pay Sh. Pawan Kumar his due share of Joint Business of Karyana and Cloth Business.

- xvii. That Dharmpal had never given notice in writing since 1975 to 2007 to vacate the Shop No. 1739, Main Bazar, Manimajra, UT, Chandigarh and never any relatives/friends came forward for such type of request as both were doing joint business and all sale money was retained by the Dharmpal as books of accounts were maintained by the Dharmpal Bhalla being literate and defendant is not much literate.
- xviii. That in Shop No. 1740 already electricity fitting had been done (i.e.) after shop was vacated by the Tenant as the same shop is required for the bonafide use of younger son of defendant namely Bhushan Bhalla who is of marriageable age and Shop No. 1739 is required for the use of defendant to earn his livelihood as shops are small in size and it is difficult to survive by both the families on one shop.
- xix. That false case had been filed by Dharmpal Bhalla to create pressure and to extract some money from the defendant.
- xx. That Dharmpal had not attached any proof of document which could show that Dharmpal was only doing the business of karyana and cloth business.
- xxi. Plea taken by the Dharmpal with regard to NOC for giving in the office “regarding no objection to the business which was being carried on in the shop by the owner” is incorrect as the defendant is carrying the business of karyana items jointly since 1975 so there is no such need for such type of affidavit. false concocted story has been made by the plaintiff.
- xxii. The business of the Cloth and Karyana had well established business and having goodwill in the market.”

There is no reference in the petitioner's application as to when the afore quoted long list of facts came to the petitioner's knowledge and as to why did he not incorporate them in his written statement or in his counter claim filed by him way back in March 2015. These reasons were also not divulged before this Court. Thus, the petitioner's amendment application being hit by the proviso to Order 6 Rule 17 CPC has rightly been dismissed by the Trial Court especially when the same was filed virtually at the fag end of the trial.

Dismissed.

10.09.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No