

CR-273-2017 (O&M)

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

**CR-273-2017 (O&M)
Date of decision : 14.01.2019**

Madan Lal

... Petitioner

Versus

Nathi Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 29.11.2016 (Annexure P-6), whereby the application of the petitioner-defendant for amendment of the written statement at evidence stage by incorporating the factum of mortgage deed dated 30.06.2013, in a suit for specific performance of agreement to sell dated 17.11.2011, has been declined.

Learned counsel appearing on behalf of the petitioner submitted that though the mortgage deed is prior to filing of the suit, but this fact could not be incorporated in the written statement due to inadvertence. The amendment is essential and necessary as it would help the Court for adjudication of the *lis* as to whether the plaintiff would be entitled to discretionary relief or not.

Learned counsel for the respondent supported the impugned

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order and submitted that once the suit was post to the mortgage deed, there was no compliance of expression 'Despite Exercise of Due Diligence' in view of the amendment caused in Order 6 Rule 17 of CPC. The aforesaid amendment is totally a different stand, which cannot be permitted to be incorporated, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Bhardwaj, for, no doubt the petitioner-defendant had not been diligent, rather negligent in incorporating the relief of mortgage, which was six months prior to filing of the suit. It can be said to be not a serious error, but due to inadvertence. No harm and prejudice would be caused to the parties to the *lis* as both the would be able to lead and rebut the evidence, rather it would help the Court for adjudication of the *lis*. Accordingly, the impugned order, under challenge, suffers from illegality and perversity and the same is hereby set aside. The revision petition stands allowed subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No