

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 405 of 2019
Date of decision: 18.1.2019

Vishnu Bhagwan Mangla

.. Petitioner

v.

Smt. Shanti and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.Anil Mehta, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

Aggrieved of the order dated 15.12.2018 passed by Civil Judge (Junior Division), Gurugram (hereinafter described as 'the court below') dismissing the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC'), the present civil revision petition has been filed.

The facts in brief are that a suit for specific performance was filed by the petitioner (plaintiff in the suit) on the basis of agreement to sell dated 8.9.2012. On notice, written statement was filed taking a stand that the agreement to sell had already been cancelled and the earnest money stood forfeited. An application for amendment was moved by the petitioner praying that he may be allowed to amend the plaint to make it a suit for declaration. The application was dismissed by the learned court below vide order dated 1.11.2016. The order was challenged in this Court in Civil Revision No. 8441 of 2016. The amendment was allowed vide order dated 28.3.2018, subject to payment of cost of ₹10,000/-to the defendants.

Thereafter, the petitioner filed the amended plaint in para No. 4 of which the name of the witness to the agreement to sell was mentioned as Vinod Kumar. On 9.4.2015, Vinod Kumar tendered his affidavit as Ex.PW3/A, he was to be cross-examined. Thereafter, another application for amendment was moved stating that name of Vinod Kumar mentioned in the plaint be read as Ajay Kumar Gupta as the petitioner gave balance consideration in the presence of Ajay Kumar Gupta. However, it was pleaded that there is no written receipt with regard to the payment of balance amount. The said application was dismissed vide impugned order. Being aggrieved of the order, the present civil revision petition has been filed.

Learned counsel for the petitioner argues that the learned court below erred in dismissing the application by stating that the application filed under Order VI Rule 17 CPC is barred. He relies upon the following extract of the order:

“The application is specifically barred under by proviso to Order VI Rule 17 CPC which provides that *“no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”* In this case, the plaintiff has miserably failed to prove due diligence in not raising the matter earlier before start of the trial.”

The contention raised by learned counsel for the petitioner lacks merit. Order VI Rule 17 CPC is quoted below:

“ ORDER VI

PLEADINGS GENERALLY

1. Pleading.- “Pleading” shall mean plaint or written statement.

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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 the due diligence, the party could not have raised the matter before the commencement of trial.”

From the reading of Order VI Rule 17 CPC, it is clear that the Court has power to allow the party to alter or amend the pleadings for the purpose of determining the real questions in controversy. The proviso to the Rule states that no application for amendment shall be allowed after commencement of the trial unless the court is satisfied that in spite of due diligence, the party was not able to raise the matter before the commencement of trial.

The contention that the application has been dismissed merely as Order VI Rule 17 CPC provides that no application shall be allowed after commencement of the trial is not well-founded. A reading of the order in entirety shows that the court below had come to the conclusion that the petitioner had miserably failed to prove due diligence in raising the matter earlier i.e. before the commencement of trial. Even before this court,

learned counsel for the petitioner has not been able to establish that in spite of due diligence, the amendment could not have been made prior to the commencement of trial.

As per the facts of the present case, it was pleaded in the amended plaint that Vinod Kumar was witness to the agreement to sell. The said amendment was allowed. He tendered his affidavit before the court below and the matter was pending for his cross-examination. At that stage, an application was moved stating that balance consideration was paid by the petitioner in the presence of Ajay Kumar Gupta but there is no written receipt of the said payment, meaning thereby that there is no document to show that Ajay Kumar Gupta was a witness. In spite of that, the prayer in the application is that instead of the name of Vinod Kumar, name of Ajay Kumar Gupta should be there. The endeavour of the petitioner is evident that the witnesses are being changed, as and when, one more suitable is available.

No interference is called for in the impugned order. The revision petition is dismissed. However, it is clarified that nothing stated in this order shall be construed as an expression of opinion on the merits of the suit.

(AVNEESH JHINGAN)
JUDGE

18.1.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No