

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 104

Case No. : C. R. No. 6663 of 2018

Date of Decision : May 06, 2019

Shiv Dayal Petitioner

vs.

Krishan Kumar and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Munish Behl, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 15.09.2018 passed by the Civil Judge (Junior Division), Karnal (for short – the Trial Court) dismissing the application filed by the petitioner-defendant under Order 6 Rule 17 read with Section 151 CPC seeking therein amendment of his written statement.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that the respondents filed a suit seeking therein specific performance of the agreement to sell dated 06.10.2015 with respect to the property fully detailed and described in paragraph 2 of the plaint (for short – the suit property). Symbolic possession of the suit property was also sought. Permanent injunction for restraining the petitioner-defendant from alienating, transferring and

mortgaging the suit property was also prayed for.

On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed his written statement in which he inter alia took the plea that the petitioner-defendant had never agreed to sell the suit property to the respondents-plaintiffs and had also never received any sale consideration from them as also that the respondents-plaintiffs had played fraud upon him. Thereafter, the Trial Court framed issues and the respondents led their entire evidence. Before the petitioner was to lead his evidence, he filed an application under Order 6 Rule 17 CPC seeking therein to amend his written statement giving therein the details with regard to the fraud allegedly played by the respondents upon him. The Trial Court dismissed the application through order dated 15.09.2018 which is under challenge through the present proceedings.

Learned counsel for the petitioner submits that through his amendment application, no new fact was being introduced by the petitioner and that he was only wanting to elaborate the plea of fraud already taken by him. It is further submitted that since the nature of suit would not change, the Trial Court should have permitted the sought amendment.

Admittedly, through the amendment sought by him, the petitioner does not seek to introduce any new fact and wants to give details with regard to the plea of fraud already taken by him in his written statement filed by him on 19.12.2016. That being so, the facts which are now sought to be pleaded were well within his knowledge even prior to the filing of the written statement but he did not include the same therein. No

explanation has been given by him for such omission. Therefore, the amendment sought by the petitioner is clearly hit by the proviso to Order 6 Rule 17 CPC.

Even otherwise, after the petitioner filed his written statement, issues were framed and the respondents-plaintiffs have already led their evidence. Thus, the amendment sought by the petitioner is also highly belated without any explanation by the petitioner for such delay.

Dismissed.

(DEEPAK SIBAL)
JUDGE

May 06, 2019
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>