

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

107

CR No.7209 of 2018 (O&M)

Date of decision:15.1.2019

Rakesh Kumar

... Petitioner

versus

Sadhu Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Pradeep Sharma, Advocate, for
Mr.Anil Kumar Sagar, Advocate,
for the petitioner

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AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner has challenged the order of the learned trial Court (Civil Judge, Senior Division, Mohali), dated 5.10.2018, whereby the application of the petitioner (who is the plaintiff in the suit), under Order 6 Rule 17 of the CPC, has been dismissed.

A perusal of the said order shows that the suit was instituted on 31.7.2014, with the written statement filed on 21.10.2014, after which an application under Order 7 Rule 11 of the CPC had been decided, despite all of which the petitioner-plaintiff had not made good the deficiency of court fee for three dates, and only thereafter issues were framed on 28.9.2015, with the petitioner also having made a statement that he did not wish to press the application under Order 39 Rules 1 and CPC at that stage.

The impugned order further goes on to show that five opportunities were granted to the petitioner-plaintiff for producing his witnesses, after which another application filed under Order 6 Rule 17 CPC had in fact been decided in his favour on 2.9.2016, that amendment having

been with regard to acquisition of three khasra numbers out of the suit property, as were contended to have come to the knowledge of the petitioner after his receiving information under the Right to Information Act, 2005.

After that, 3 witnesses also had been examined, with their cross-examination also conducted.

The suit was thereafter dismissed in default but had been restored on 24.7.2018, subject to payment of costs of Rs.5,000/-.

The petitioners' contention in his application filed under Order 6 Rule 7 CPC (the one that has now been dismissed vide the impugned order), is that he had engaged a new counsel, after which the application for restoration of the suit was allowed and therefore, he may be allowed to again amend the plaint.

2. The learned trial Court having noticed the aforesaid facts, while noticing various judgments of the Supreme Court, held that the court cannot come to the aid of a person who has slept over his rights and once the trial has begun, with 4 years having passed since the written statement of the defendants had been filed stating therein that notices had been issued in the year 2011 (the amendment sought by the plaintiff being relatable to those notices), he could not be allowed to again amend the plaint at that stage.

3. Before this Court, learned counsel for the petitioner submits that as a matter of fact the petitioner only wishes to add one paragraph, other than also adding a prayer in the plaint, to state that the notices referred to by the respondents-defendants have no effect upon the outcome of the suit and consequently, the prayer deserves to be allowed, that essential pleading not having been taken by the counsel who originally filed the suit

on behalf of the petitioner-plaintiff.

4. Having considered the argument, though it may be possible that the averment now sought to be added in the plaint by amending it, was not taken due to inadvertence on part of his former counsel, however, naturally, the petitioner-plaintiff signed the plaint after duly reading it and therefore at a stage after the suit already had earlier stood dismissed in default, and was also delayed earlier for non payment of court fee, with an amendment already allowed earlier, I see no ground whatsoever to interfere with the impugned order, witnesses also already having been examined, and the trial therefore being well under way.

5. Consequently, in view of the statutory bar contained in Order 6 Rule 17 CPC, that an amendment should not be allowed after the trial has commenced unless it can be shown that the party seeking such an amendment had exercised due diligence despite which the averment sought to be made could not be added, and such due diligence not having been shown by the petitioner, this petition is dismissed *in limine*.

15.1.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No