

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 204

CR-8641-2016

Date of decision : 03.07.2019

Sukhwant Singh

..... Petitioner

VERSUS

Hoshiar Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Parambir Singh, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

Through the present petition challenge is made to the order dated 06.12.2016, passed by the Additional Civil Judge (Senior Division), Tarn Taran (for short, the Trial Court) through which an application filed by respondent No.1-Hoshiar Singh under Order 6 Rule 17 CPC for amendment of his written statement has been allowed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that on 03.04.2012 the petitioner filed a suit seeking therein recovery of ₹20 lakhs from the respondents. Future interest was also claimed. Such claim was made *inter alia* on the ground that the respondents, acting as travel agents, had taken ₹20 lakhs from the petitioner on the pretext of sending and settling the petitioner's son in New Zealand. Thereafter, the petitioner found that the respondents had played a fraud upon him. Resultantly, he lodged an FIR against the respondents under Section 420 and 406 IPC. In the criminal trial which ensued the respondents were found guilty by the Trial Court and were sentenced to undergo two years' rigorous imprisonment each. Thereafter, the petitioner filed the instant suit seeking recovery of the aforesaid amount from the respondents. On being put to notice, the respondents appeared before the Trial Court and contested the suit. It was specifically denied that any

money was received by them from the petitioner. All other averments made by the petitioner were also denied. On the dispute between the parties the Trial Court framed the issues on which the petitioner led his entire evidence. Thereafter, the respondents took several adjournments but failed to conclude their evidence. Thereafter, respondent No. 1 filed an application under Order 6 Rule 17 CPC seeking therein to amend his written statement to the effect that on 10.11.2010 a compromise had been arrived at between the parties as per which an amount of ₹49,900/- had been paid by the respondents to the petitioner towards full and final settlement of all the disputes. Such amendment was permitted to be made by the Trial Court through the order under challenge in the present proceedings.

In spite of having been served, no one has appeared on behalf of the respondents.

Learned counsel for the petitioner has been heard and the record perused with his able assistance.

Order 6 Rule 17 CPC reads as under: -

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

As per the afore-quoted provision, the Court, at any stage of the proceedings, may allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the purpose of determining the

real questions in controversy between the parties. The proviso to Order 6 Rule 17 CPC clearly stipulates that no application for amendment shall be allowed after the commencement of the trial, unless the Court is convinced that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

The petitioner filed his recovery suit on 03.04.2012 in which he *inter alia* pleaded that the respondents, acting as travel agents, took from him an amount of ₹20 lakhs on the pretext of sending and settling his son in New Zealand. Later, his son was not sent to New Zealand by the respondents and he came to know that the respondents had played a fraud upon him. He lodged an FIR under Section 420 and 406 IPC against the respondents in which they stand convicted. Through the instant suit the petitioner sought recovery of the aforesaid amount paid by him to the respondents alongwith interest. In the written statement filed by the respondents on 20.11.2014 they denied the claims made by the petitioner. No plea of any compromise arrived at between the parties on 10.11.2010 was raised. Even in the criminal trial neither under the statement made by the respondents under Section 313 Cr.P.C. nor while appearing as a defence witness the respondents ever raised the plea with regard to any compromise having been arrived at between the parties. Even during cross examination of the petitioner's witnesses not even a suggestion was put on behalf of the respondents with regard to any compromise. After the petitioner closed his evidence, the respondents failed to conclude their evidence and in fact respondent No. 1 filed an application under Order 6 Rule 17 CPC seeking amendment of his written statement through which he wanted to introduce a new plea that on 10.11.2010 the parties had compromised the matter as per which, in full and final settlement, an amount of ₹49,900/- was paid to the

petitioner by them.

In the background of the above facts, the plea sought to be raised by the respondents through the sought amendment lacks bonafide. It is also hit by the proviso to the afore quoted Order 6 Rule 17 CPC. No reason is forthcoming in the application filed by respondent No. 1 as to why the plea with regard to the alleged compromise was not raised by the respondents either in their written statement filed by them way back in the year 2014 or even in the criminal trial in which they stand convicted.

In view of the above, while setting aside the impugned order the present petition is allowed.

No costs.

03.07.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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