

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.8571 of 2017 (O&M)
Date of Decision.01.03.2019

Chotte Lal

...Petitioner

Vs

Ami Lal and others

.Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Mukesh Yadav, Advocate
for respondents No.1 and 2.

-.-

AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated 08.11.2017 (Annexure P-1) whereby application of the defendant for amendment of the written statement by adding following paragraph i.e. subsequent event with regard to decision dated 14.12.2016 rendered in civil suit filed on 16.04.2015 by Birender and Lal Singh, has been dismissed.

“And after institution of the above suit and after submitting the written statement by the defendant the land measuring 7 kanal 8 marla which was left by the plaintiffs, Ram Kumar deceased executed agreement of the 1 kanal with Birender s/o Hanuman r/o Rewasa and Lal Singh s/o Mehar Chand r/o Paal and its suit for specific performance was instituted on dated 16.04.2015 and decided on 14.12.2016 and was decreed by the court

and is a subsequent and it proves that plaintiffs had left 7 kanal 8 marla land and during the arguments of the above suit this fact was also brought in the notice of the court and the court declined the facts of the defendants regarding the suit.”

The application was dismissed simply on the ground that it was a delaying tactic.

Mr. J.P. Sharma, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff filed the suit for specific performance of the agreement to sell dated 28.12.2012 in May, 2013 and the written statement was filed on 02.09.2013 and the remaining defendants No.1A, 2A & 3 adopted the written statement already filed on 28.04.2014. The judgment sought to be incorporated is dated 14.12.2016 in the suit filed on 16.04.2015, which is a subsequent event. The trial Court declined the application on the ground of delay and also noticing the fact that plaintiff had also sought amendment of the plaint on 08.08.2016, which was allowed. The judgment is dated 14.12.2016 but the present application has been moved on 28.09.2017. The amendment sought is essential and necessary for proper adjudication of the suit and if not permitted, it would seriously prejudice rights of the defendants, thus, urges this Court for setting aside the impugned order.

Mr. Mukesh Yadav, learned counsel appearing on behalf of the respondent-plaintiff supported the impugned order while stating that the application in hand was filed on 28.09.2017 whereas the amended plaint in pursuance of application seeking amendment of

the plaint was filed in January, 2017. No explanation has come forth qua not moving the application during the pendency of the amendment of the plaint. There is no compliance of expression “despite due diligence”, thus, urges this Court for dismissal of the revision petition with 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. Sharma. The facts noticed above have not been controverted by the counsel representing both the parties. The Court below remaining oblivious of the fact that the application for amendment of the written statement by incorporating the subsequent event is dated 28.09.2017 whereas the judgment is dated 14.12.2016, therefore, there cannot be any delay whereas the amended plaint was filed on 24.07.2017. This fact should have been noticed by the trial Court and blamed defendants as yardsticks for amendment of the plaint and written statement are totally different. The amendment sought to be incorporated is essential and necessary for adjudication of the suit.

In view of such circumstances, the order under challenge suffers from infirmity and accordingly set aside. The amendment application is allowed. Resultantly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

March 01, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No