

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.964 of 2019

Date of decision:16.05.2019

Vinod Kumar Giri

... Petitioner

Vs.

Bhajan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Duhan, Advocate
for the petitioner.

Mr. Gagan Gupta, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 16.01.2019 whereby an application of the petitioner-defendant for amendment of the written statement by admitting the corresponding paragraph of plaint whereby plaintiff asserted defendant to be owner of the shop, to explain the status of defendant as occupier, has been dismissed.

Learned counsel for the petitioner submitted that two suits were filed by the parties, one by the respondent-plaintiff seeking mandatory injunction of the property in dispute wherein in para 2 of the plaint, respondent-plaintiff himself pleaded to be owner which inadvertently in written statement on merits was admitted but in fact, in other suit, the petitioner-defendant had claimed himself to be occupier, therefore,

aforementioned amendment was necessary. The said application was moved when the suit was fixed for evidence of the plaintiff. No prejudice would be caused to the respondent as he has right to rebut the aforementioned pleading by way of evidence.

Per contra, learned counsel for the respondent submitted that amendment tantamounts to withdrawing of the valuable right accrued in favour of the respondent and rightly so the application has been dismissed and thus, urged this Court for dismissal of the petition.

I have heard the learned counsel for the parties and appraised the paper book. Para 2 of the plaint and corresponding paragraph of written statement read as under:-

Plaint

“2. That presently the defendant is the owner/landlord of the above said shop.”

Written statement

2. That para no.2 of the plaint is admitted as correct.”

Attempt to seek amendment amounts to withdrawing of the admission which is not permissible in law as written statement was filed way back on 06.11.2012 whereas application for amendment was submitted on 23.05.2018. The amendment does not fall within the expression “due diligence” as per the provisions of Order 6 Rule 17 CPC. The order cannot be said to be suffering from illegality, infirmity, much less without jurisdiction.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No