

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

CR No.1913 of 2019

Date of decision: 13.09.2019

Sunita Julka

.... Petitioner

Versus

Anju Julka and Ors.

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Sandeep Sharma, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order Annexure P-6 dated 05.12.2018 passed by the learned Civil Judge (Jr. Div.), Jalandhar dismissing the application under Order 6 Rule 17 CPC filed by the petitioner/defendant No.2 in Civil Suit No.77 of 2016 in case titled as Anju Julka and others vs Madhu Julka and others.

[2] Brief facts of the case leading to the filing of the revision petition are that the plaintiffs (respondent Nos.1 to 4 herein) filed a suit for possession on the basis of title against the defendants (proforma respondent Nos.5 to 8 and petitioner herein). Petitioner / defendant No.2 filed written statement on 13.10.2016. Issues were framed in the case on 17.12.2016 where after plaintiff (respondent No.1 herein) closed her evidence on 11.01.2018. Thereafter, defendants took 7 opportunities for leading evidence, where after petitioner/defendant No.2 filed an application under

Order 6 Rule 17 CPC for amendment of the written statement on the ground that she was residing in Australia and the agreement came to her knowledge after she returned from Australia, that her counsel did not bring on record the agreement executed between Chander Parkash, husband of plaintiff No.1 (respondent No.1 herein) and father of plaintiff Nos.2 to 4 (respondent Nos.2 to 4 herein) with Anil Kumar, husband of the petitioner/defendant No.2 and father of defendant No.2 (proforma respondent No.7 herein), that the amendment was necessary, no prejudice would be caused if the application for amendment was allowed, otherwise, she would suffer irreparable loss.

[3] Application under Order 6 Rule 17 CPC was opposed on the ground that counsel for the petitioner/defendant No.2 had cross-examined the plaintiffs and availed 7 opportunities for leading defendants' evidence but was throughout silent about the aforesaid agreement, that the applicant had failed to give any reason for non-mentioning of the agreement in the written statement except that she was residing in Australia and came to know about the same on return but had not produced her passport or other documents to show that she was actually residing in Australia, when she had returned from Australia or when she had learnt about the agreement etc. Moreover, the agreement pertained to the year 2000 whereas the application under Order 6 Rule 17 CPC was filed in the year 2018 i.e. after filing of the written statement in the year 2016.

[4] Learned Civil Judge (Jr. Div.), Jalandhar held that in the facts of the case, the document sought to be relied upon was clearly barred by limitation and could not be brought on record by way of amendment. Accordingly, the application was dismissed while holding that the same had been filed at the concluding stage of the case just to delay the proceedings of the suit.

[5] Learned counsel for the petitioner has reiterated the submissions made before the learned Civil Judge (Jr. Div.), Jalandhar and as noted in paragraph No. 2 above.

[6] I have considered the submissions of learned counsel. Admittedly, the written statement was filed on 13.10.2016. Thereafter, issues were framed on 17.12.2016 and plaintiff (respondent No.1 herein) closed her evidence on 11.01.2018. Thereafter, defendants took 7 opportunities for leading evidence, where after petitioner/defendant No.2 filed an application dated 22.05.2018 under Order 6 Rule 17 CPC for amendment of the written statement. Although, in the application it has been claimed that the applicant was residing in Australia and came to know about the agreement on her return, yet the application is absolutely silent as to how the applicant learnt about the agreement of the year 2000 and when she acquired knowledge about the same. Besides, she failed to produce her passport or any other document to show that she was residing in Australia or of her having travelled from Australia to India and the dates and year when she travelled and when, how and in what circumstances she acquired knowledge of the agreement. Apart from the above, the petitioner/defendant No.2 not only cross-examined the plaintiffs but also availed seven opportunities and only thereafter filed application dated 22.05.2018 under Order 6 Rule 17 CPC by referring to agreement of the year 2000.

[7] As per the proviso to Order 6 Rule 17 of the CPC, an application for amendment cannot 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 the trial.

However, the application is absolutely silent about the circumstances and

date of knowledge about the agreement, consequentially of the exercise of due diligence.

[8] Exercise of due diligence is a sine qua non for allowing an application for amendment. Reference in this context is made to the decision of Hon'ble the Supreme Court in **Ajendraprasadji N. Pande and another vs Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1**. Relevant extract of the same is reproduced as under :-

“52. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents - original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.

54. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash vs. Nankhu & Ors. (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the

matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).

[9] The petitioner/defendant No.2 having failed to substantiate exercise of due diligence and the case not falling within the parameters of proviso to Order 6 Rule 17 CPC, the revision petition is bereft of merit. No ground whatsoever has been pointed out by learned counsel for the petitioner for interfering with the well-reasoned order Annexure P-6 dated 05.12.2018 passed by the learned Civil Judge (Jr. Div.), Jalandhar. The revision petition is bereft of merit, accordingly the same is dismissed in limine.

(B.S. Walia)
Judge

13.09.2019
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.