

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

**CR-6832-2016 (O&M)
Date of decision : 23.05.2022**

Avtar Saha and Another

... Petitioner(s)

Versus

Gobind Kaur

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Roopam Jain, Advocate for the petitioners.

Mr. Rajesh Sood, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed challenging order dated 08.07.2016 passed by the Civil Judge (Sr. Division), UT Chandigarh vide which the application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the written statement filed by the defendant-petitioner no.1 has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for mandatory injunction for directing the defendants to hand over vacant possession of the first floor of Shop No.28/A/28/1, Village Burail, UT Chandigarh. It was averred in the plaint that the defendant-petitioner no.1 was running a business in the name and style of M/s Galaxy Health Club since April 2003. It was also averred that

the plaintiff-respondent had earlier filed a rent petition and in the said rent petition the defendant-petitioner no.1 took a categorical plea that there is no relationship of landlord and tenant between the parties and that the possession was permissive. The plaintiff-respondent withdrew the said rent petition on 19.07.2011 and thereafter the present suit was filed in 2011 itself. The written statement in the present case was filed on 19.04.2012 by the defendant-petitioner no.1 taking a categorical stand therein that the defendant-petitioner no.1 was in permissive possession and that there was an oral settlement which took place between the plaintiff-respondent and defendant-petitioner no.1, who are real sisters, and that the defendant-petitioner no.1 had constructed the first floor of the premises in question and had spent a sum of ₹5 lakhs on the construction and also paid an amount of ₹5 lakhs in cash to the plaintiff-respondent. Thereafter, issues were framed. The plaintiff-respondent closed her evidence on 18.03.2015. Seven effective opportunities were given to the defendant-petitioner no.1 to lead her evidence. However, she failed to lead her evidence and the present application for amendment of the written statement was moved. By way of amendment the following paragraph was sought to be added in the written statement :

“1(a) That the defendant is running a GYM under the name and style M/s Galaxy Health Club since April 2003. The defendant has showed income from the running of GYM in his Income Tax Return pertaining to the financial year 2003-2004. The defendant is running

the said GYM in the property in question continuously since April 2003. The plaintiff had entered into written agreement with the defendant No.1 i.e. her sister on 18.11.2002. The defendant No.1 gave ₹5,00,000/- to the plaintiff as per the agreement in lieu of exclusive possession which has been specifically mentioned in the agreement. The defendant No.1 also spent an amount of ₹5,00,000/- on the construction of the GYM out of the funds which were generated by the defendant No.1 on the basis of the assurances made by the plaintiff in the agreement. The defendant No.1 generated the funds by selling her jewellery. The defendant has been regularly filing income tax return since 2002-2003 and is showing income from GYM at Burail. The defendant got GYM registered on 25.11.2003 and purchased the major equipments for the functioning of GYM on 08.05.2003 and has been regularly purchasing more machines for running the GYM successfully. The plaintiff has cheated upon the defendant and filed the present civil suit.”

The defendant-petitioners by way of the amendment want to add the plea that qua the income earned by the defendant-petitioner No.1 from the Gym, income tax return was filed for the financial year 2003-04 and that the Gym had been running in the premises in question since April

2003. The defendant-petitioners also wants to add the plea that on 18.11.2002 the defendant-petitioner No.1 and the plaintiff-respondent had entered into a written agreement and an amount of ₹5 lakhs was paid by the defendant-petitioner no.1 to the plaintiff-respondent in lieu of the exclusive possession. Further plea sought to be added was that an amount of ₹5 lakhs had been spent on the construction on the basis of the assurances made by the plaintiff-respondent in the agreement dated 18.11.2002. The defendant-petitioners no.1 further wants to incorporate the plea in the written statement that the funds had been generated by selling her jewellery. Reply was filed to the said application and the application for amendment was contested by the plaintiff-respondent. Vide the impugned order the application was dismissed after noticing that despite having availed 6-7 effective opportunities to lead the evidence, the present application has been filed by the defendant-petitioners. It was also noted in the impugned order that the amendment has been sought at the time when the trial is at its conclusion as also that the amendments sought now were well within the knowledge of the defendant-petitioners and, hence, the application could not be allowed at this belated stage.

Learned counsel for the defendant-petitioners would contend that defendant-petitioner No.1 is an illiterate lady and was not able to produce the said document and raise the said plea at an earlier stage. It is only when she was preparing the case for evidence that she came across the said document.

Per contra, learned counsel for the plaintiff-respondent has contended that the defendant-petitioners in the rent petition filed by the plaintiff-respondent did not raise this plea of any agreement having been entered into. Even in the present case, in the written statement filed on 19.04.2012, a plea of an oral settlement was taken. After having availed 7 effective opportunities to lead their evidence, the present application for amendment was filed. Learned counsel for the plaintiff-respondent would further contend that not only has the application been filed at a very belated stage but also that the same has been filed to fill-in the lacuna since the evidence of the plaintiff-respondent already stands concluded. It is further the contention of learned counsel for the plaintiff-respondent that in the present case the said documents, if at all entered into, were well within the knowledge of the defendant-petitioners and, hence, there was no reason why the same could not have been relied upon at the time of filing of the original written statement.

Heard.

In the present case, earlier a rent petition was filed by the plaintiff-respondent where the stand taken by the defendant-petitioners was that defendant-petitioner no.1 was in permissive possession of the property. The rent petition was withdrawn on 19.07.2011 and the present suit was filed in the year 2011 itself. The written statement was filed by the defendant-petitioner no.1 on 19.04.2012 where a categorical stand was taken that she was in possession of the property on the basis of an oral settlement. Thereafter, the defendant-petitioners were granted 7 effective opportunities to lead their

evidence, however, instead of leading their evidence, the present application was filed.

Order 6 Rule 17 of 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 pleading 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.”

A perusal of the proviso to Order 6 Rule 17 of CPC clearly reveals that an application for amendment of the pleadings can be allowed after the trial has commenced if the Court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. In the present case there is not even an averment in the application that despite due diligence the said pleas could not be raised. As per the case set up by the defendant-petitioners, the agreement now sought to be introduced is between the defendant-petitioner no.1 and the plaintiff-respondent. There is no reason forthcoming as to why the plea qua the said agreement could not be raised earlier. The plaintiff-respondent

had concluded her evidence and despite having availed numerous opportunities no evidence was led by the defendant-petitioners and the present application was moved. The present application appears to be nothing but an endeavour to fill-in the lacuna in the case of the defendant-petitioners and to delay the proceedings.

It is trite that where the amendment of the written statement is concerned the same is to be dealt with liberally. However, the amendment cannot be allowed in a situation where there is nothing on the record to show that despite due diligence the plea could not be raised when the original written statement was filed.

In view of the above, the present revision petition which is devoid of any merit is dismissed. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

Since the matter pertains to two sisters, it would be appropriate if the Trial Court, before proceeding with the matter on merits, sends the parties to the Mediation and Conciliation Centre to explore the possibility of an amicable settlement between them.

23.05.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO