

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

**CR No.838 of 2022 (O&M)
Date of Decision: 25-04-2022**

Amar Singh through his LR

.....Petitioner.

Versus

Abhinav Kumar and others

.....Respondents.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Ashish Pal Kaushal, Advocate
for the petitioner.

MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioner (one of the legal representatives of defendant No.1) has assailed the order dated 25.02.2022 (Annexure P-9) passed by the Additional Civil Judge (Senior Division), Fazilka (for short 'the trial Court') whereby the application moved by him and the other LRs of defendant No.1, under Order 6 Rule 17 CPC (Annexure P-7) for seeking amendment in the written statement filed by the said defendant, has been dismissed.

Shorn and short of unnecessary details, the facts culminating in the filing of the present revision petition, are that respondent No.1-plaintiff (for short 'the plaintiff') filed a Civil Suit against defendant No.1 (since deceased) as well as proforma respondents-defendants No.2 & 3 for seeking a decree for possession of the suit land by way of the specific

performance of the agreement to sell dated 16.07.2016 as claimed to have been executed by defendant No.1 in his favour. Defendant No.1 filed his written statement but he expired during the pendency of the Suit and his LRs, including the petitioner, were brought on the record and they moved application Annexure P-7 for seeking amendment in the written statement which has been dismissed vwaide the impugned order.

I have heard learned counsel for the petitioner in this petition and have also perused the file carefully.

Learned counsel for the petitioner has contended that defendant No.1 had, in fact, secured a loan from the plaintiff who obtained his (defendant No.1's) signatures on several papers at that time but however, the counsel, as engaged by defendant No.1, did not disclose these facts in the written statement and the LRs of defendant No.1 came to know about this omission when they engaged a new lawyer after the death of defendant No.1 and the afore-said facts are relevant and material for the proper adjudication of the real controversy between the parties and therefore, the proposed amendment in the written statement was essential but vide the impugned order, the trial Court has erroneously dismissed the application moved by them for this purpose and hence, the same deserves to be set-aside. To buttress his contentions, he has placed reliance upon **Prithi Pal Singh and another vs. Amrik Singh and others, 2014(1) R.C.R. (Civil) 327; Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. & ors, 2012(2) R.C.R. (Civil) 739; Abdul Rehman and Anr. vs. Mohd. Ruldu and Ors., 2012(4) R.C.R. (Civil) 481 & Ragu Thilak D. John vs. S.**

Rayappan, 2001(1) R.C.R. (Civil) 726.

However, I do not find the above-raised contentions to be tenable because in para No.2 of the preliminary objections in the written statement Annexure P-2 as filed by defendant No.1 himself, he had categorically asserted that he never knew the plaintiff nor ever executed any agreement to sell his land in his (plaintiff's) favour and had no necessity to sell his land and the alleged agreement was a forged and fabricated document and did not bear his signatures whereas in application Annexure P-7, his LRs have taken a somersault by seeking the amendment in the said written statement so as to incorporate the facts in the same, to the effect that defendant No.1 was under debts of the Bank and other private persons and therefore, he had secured the loan from the plaintiff by way of two cheques worth Rs.15 lac each but the plaintiff had obtained his signatures on several documents at that time because of his (defendant No.1's) being under the pressure as a debtor. The above-said pleas are not only inconsistent but are, rather, mutually destructive and therefore, the proposed amendment is not permissible and that too, especially in the eventuality when the factum of being under any pressure to repay the loan/debts, was supposed to have been personally experienced by/to be known to defendant No.1 himself.

Then, it is worth-while to mention here that written statement Annexure P-2, filed by defendant No.1 himself, bears the date 30.01.2017 and throughout in their said application, the LRs of defendant No.1 have not come forward with any fair and candid version as to how, when and

under what circumstances, they came to know about the afore-mentioned facts, as now sought to be incorporated in the written statement by way of the proposed amendment and as to why defendant No.1 himself or they (LRs), after coming to know about the said facts, did not ever report this matter to the competent authorities all this while.

Further, the explanation, as put-forth by the LRs of defendant No.1 in application Annexure P-7 regarding the above-said facts having not been incorporated in the original written statement by the counsel engaged by defendant No.1 at the time of filing the same, can, by no stretch of imagination, be termed to be a cogent and plausible one because in normal course of events, it seems highly improbable that throughout during his lifetime, defendant No.1 would not have noticed the above-said omission on the part of his counsel.

The observations made by Hon'ble the Supreme Court in **Prithi Pal Singh and another (supra)**, **Rameshkumar Agarwal (supra)**, **Abdul Rehman and Anr (supra)** and **Ragu Thilak D. John (supra)**, are of no avail to the petitioner because the facts and circumstances of above-cited cases are distinguishable from those of the present one. In **Prithi Pal Singh and another (supra)**, the plaintiff, by way of the proposed amendment, sought to introduce an additional plea in the plaint and in **Rameshkumar Agarwal (supra)** also, the plea, sought to be incorporated in the plaint by way of the amendment, related to the explanation qua the mode of payment of the amount, already pleaded therein whereas in this case, as discussed above, the proposed amendment pertains to a plea which

is in contradiction with the plea, as initially set-forth in the written statement. Further, in **Abdul Rehman and Anr (supra)**, the proposed amendment was necessitated in view of the stand taken by the defendants in their written statement and it was observed that the same would not change the basic nature of the Suit whereas in the case in hand, as mentioned earlier, the proposed amendment and the plea, as taken in the initially filed written statement, are contradictory to each other. Again, in **Ragu Thilak D. John (supra)**, the proposed amendment was sought in view of the change in the circumstances during the pendency of the Suit whereas it is not so in the instant case.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the present revision petition, being sans any merit, stands dismissed.

25th April, 2022.
neetu

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*