

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.3781 of 2019 (O&M)
Date of Decision : 14.12.2022**

Mani Ram

....Petitioner

VERSUS

Phoolwati and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakesh Dhiman, Advocate for the petitioner.

Mr. Akshay Jindal, Advocate for respondent nos.1, 3 and 4.

ALKA SARIN, J. (Oral)

The present revision petition has been preferred against the impugned order dated 06.05.2019 whereby the application filed by the defendant-petitioner for amendment of the written statement has been dismissed.

The brief facts relevant to the present *lis* are that plaintiff-respondent no.1 filed a suit for declaration and permanent injunction to the effect that she was owner in possession of the suit property on the basis of Will dated 03.06.2011 left by her husband. On the basis of pleadings of the parties, issues were framed on 20.07.2015 and thereafter the plaintiff-respondent no.1 led her evidence. During the pendency of the present suit, on 31.08.2016, a judgment and decree came to be passed in a suit for partition wherein the defendant-petitioner as well as plaintiff-respondent no.1 were parties. The defendant-petitioner by way of an application for amendment of the written statement sought to bring on record the *factum qua* the passing of the judgment and decree dated 31.08.2016. However, the same was dismissed by the Trial Court on the ground that though the order

was passed in the year 2016, the application for amendment was filed in the year 2018.

Learned counsel for the defendant-petitioner would contend that the delay in filing the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 occurred due to the fact that the details were given to the counsel, however, the counsel failed to file the application. Thereafter, the counsel was changed and the present application for amendment was filed. Learned counsel for the defendant-petitioner would further contend that the said amendment is necessary in order to bring on record the judgment and decree dated 31.08.2016 which would have an impact on the present case.

Per contra learned counsel for respondent nos.1, 3 and 4 has vehemently contended that the present amendment is not required and that nothing would turn on the said amendment inasmuch as the judgment and decree dated 31.08.2016 has been passed in a suit for partition.

I have heard learned counsel for the parties.

It is trite that the law where amendment of written statement is concerned is more liberal than the amendment of a plaint. Undoubtedly, the trial has commenced inasmuch as the evidence of the plaintiff was started. However, the factum of passing of the judgment and decree dated 31.08.2016 is a subsequent event which would have a bearing on the case inasmuch as both the parties to the *lis* were parties in the said suit for partition wherein the plaintiff-respondent no.1 was impleaded as defendant no.5, however, she did not appear and a preliminary decree was passed *ex parte*. Proviso to Order VI Rule 17 CPC lays down that in case the Court

comes to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of the trial, the amendment can be allowed even after the commencement of the trial. In the present case, the judgment and decree is a subsequent event though there has been some delay in filing the application for amendment. However, no prejudice would be caused to the plaintiff-respondent no.1 which cannot be compensated by way of costs.

In case of **State of Bihar and Others vs. Modern Tent House & Anr. [2018 (1) RCR (Civil) 58]** it has been held as under :

“7. It is not in dispute that the suit filed by the respondents against the appellants out of which this appeal arises is still pending. It is also not in dispute that the evidence of the parties is not yet over. In other words, the trial in the suit is going on.

8. We have perused the amendment application filed by the appellants. We find that firstly, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defense already taken; thirdly, it does not introduce any new defense compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defense already taken nor will result in withdrawing any kind of admission, if made in the written

statement; fifthly, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defense or/and the proposed amendment, the initial burden to prove the case continues to remain on the plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the Courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises”.

In view of the above, the present revision petition is allowed. Consequently, the application filed by the defendant-petitioner for amendment of the written statement stands allowed, subject to payment of costs of Rs.30,000/- to be paid to the plaintiff-respondent no.1. Pending applications, if any, also stand disposed off.

14.12.2022
jk

(ALKA SARIN)
JUDGE

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