

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

CR-494-2023(O&M)

Date of decision:-24.1.2023

Sukhpal Kaur

...Petitioner

Versus

Bikkar Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.DPS Mann, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 7.12.2022 passed by the trial Court of Civil Judge(Jr.Divn.), Gidderbaha vide which she had dismissed an application under Order 6 Rule 17 CPC filed by the defendant No.1 Sukhpal Kaur for amendment of the written statement.

2. Briefly stated, facts of the case are that plaintiff Bikkar Singh had brought a suit for possession by way of specific performance against defendants Sukhpal Kaur and Babinder Kaur, both residents of village Chottian, Tehsil Gidderbaha, District Sri Muktsar Sahib. The plaintiff had relied upon an agreement to sell dated 5.8.2015 said to have been executed by defendant No.1 Sukhpal Kaur in his favour with regard to the

suit land. In that suit, the plaintiff has sought recovery of Rs.11,60,000/- as alternative relief, further seeking a declaration that the sale deed dated 19.11.2015 executed by defendant No.1 in favour of defendant No.2 Smt.Babinder Kaur with regard to land measuring 11 kanals 0 marla is illegal, null and void ineffective qua rights of the plaintiff and being violative of agreement to sell dated 5.8.2015 between the plaintiff and defendant No.1 Sukhpal Kaur.

3. On getting notice, both the defendants had appeared and filed separate written statements contesting the suit. In the written statement filed by defendant No.1, she denied having entered into an agreement to sell with the plaintiff or having received any amount as earnest money or any date being fixed for execution and registration of the sale deed; she stated that she being owner in possession of the suit land had legally sold the same to defendant No.2.

4. Later on defendant No.1 filed an application seeking amendment of the written statement so as to take up a plea that at the time of preparation of written statement, she had told her previous counsel that in the year 2015, she was in need of money to get her property released from loan so she agreed to sell her property to Babinder Kaur defendant No.2 to clear the loan and in that regard defendant No.2 paid her Rs.8,40,000/- to get the property released from the mortgage of HDFC Bank, Branch, Gidderbaha; it was agreed between the defendant No.1 and defendant No.2 that the sale deed would be executed later on and at that time defendant No.2 Babinder Kaur had obtained one blank cheque, blank pronote and some blank documents from the defendant No.1 for security

purpose and she promised to return the same to defendant No.1 after execution of the sale deed; on 19.11.2015 defendant No.1 executed the sale deed in favour of defendant No.2 and thereafter asked defendant No.2 to return blank signed cheque, pronote and receipt and other documents, which had been taken by her for security purpose from defendant No.1 but defendant No.2 stated that she would return the same shortly after sanctioning of the mutation; defendant No.1 had blind faith in defendant No.2 Babinder Kaur, therefore, she did not press for return of those documents; after some time of filing of the suit by the plaintiff, defendant No.2 out of grudge had handed over the blank signed pronote, receipt and blank cheque to a relative of her husband, namely, Chhinderpal Singh, who misused those documents and filed a false complaint against defendant No.1 titled as 'Chhinderpal Singh Versus Sukhpal Kaur', which is pending in the Court of SDJM, Gidderbaha and defendant No.1 could not mention these facts in the written statement on account of lapse on the part of previous counsel and if proposed amendment is allowed, then no prejudice would be caused to the opposite party because that amendment will not change the nature of written statement, rather it will help in deciding the real controversy between the parties.

5. That application was opposed on behalf of the plaintiff stating that the facts sought to be incorporated in the written statement by way of amendment by defendant No.1 are irrelevant for determination of the controversy in this case; the application was not maintainable inasmuch the suit was filed in the year 2016 and evidence of the plaintiff has already been concluded and facts sought to be introduced by way of

amendment were already in the knowledge of defendant No.1, therefore, the application be dismissed.

6. Defendant No.2 in reply filed by her also denied those allegations praying for dismissal of the application.

7. After hearing arguments, learned trial Court dismissed the application vide the impugned order leaving defendant No.1 aggrieved and she has approached this Court by way of filing the present revision petition.

8. I have heard learned counsel for the petitioner besides going through the record and I find that there is no merit in the revision petition.

9. The proviso to Order 6 Rule 17 CPC, which has been noticed by the trial Court while dismissing the application clearly provides 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'*.

10. In this case, the reasons given by the defendant No.1 for not mentioning these facts in the written statement are least convincing and not plausible. It is not believable that defendant No.1 had informed her counsel regarding these facts but he did not incorporate the same in the written statement. The written statement is required to be signed by the defendant before submitting it in the Court and such defendant is supposed to append his/her signatures after going through the contents and admitting the same to be correct. It is not the case of the revision petitioner that she is not well versed in English language, as such could

not understand the contents of the written statement. Nevertheless if she is not well versed with English language, she could have asked the counsel to read the contents and explain the same to her in Punjabi or any other language, which she knows and understands. Therefore, passing the buck to the previous counsel in such a manner that facts had been told to him but he did not mention those in the written statement cannot be allowed. Furthermore, facts now sought to be incorporated in the written statement do not have any direct bearing on the merits of the case. As per own version of defendant No.1, she had executed a sale deed in favour of defendant No.2 and she want to incorporate the fact that defendant No.2 had obtained blank cheque, pronote etc. from her, which she had given to some Chhinderpal Singh, who had filed a criminal complaint against her. Any transaction between defendant No.1 and Chhinderpal Singh is not subject matter of the suit in question and defendant No.1 appears to be creating evidence for herself in the criminal complaint filed by Chhinderpal Singh against her stated to be pending in the Court of SDJM, Gidderbaha. Such type of tactics can certainly be not allowed. The proposed amendment is not found to be necessary for the purpose of determining the real question of controversy between the parties and it was rightly declined by the trial Court. The order passed in that regard is quite detailed and well reasoned and it does not suffer from any illegality or infirmity. No reason is there to interfere with it by exercising revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

However, nothing discussed above shall have any bearing on the merits of the case.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

24.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No