

247(2nd case)

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

CR-7333-2018 (O&M)

Date of Decision: 18.01.2023

Khalil

....Petitioner

Versus

Smt. Rihana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashok Kaushik, Advocate,
For the petitioner.

Mr. Jamshed Ahmed, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Revision petition herein is directed against the impugned order dated 20.09.2018 (Annexure P-3) passed by learned Civil Judge (Senior Division),Hathin, whereby in a suit for specific performance filed by petitioner,application for amendment of plaint under Order 6 Rule 17 of CPC, was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Petitioner filed application for amendment of plaint under Order 6 Rule 17 CPC. It was asserted that at the time of presenting the suit, petitioner/ plaintiff challenged reply to the notice given by Sh. Suraj Pal, Advocate on behalf of defendant/respondent to be erroneous and fabricated, whereas in the prayer clause the reply to notice of respondent could not be challenged specifically. So, he wants to add the following in the prayer clause:

“That impugned reply dated 12.07.2017 given by Sh. Suraj Pal, Advocate on behalf of the defendants are erroneous, fabricated, null and void and are liable to be ignored.”

3. Learned counsel for petitioner/plaintiff contends that plea of amendment sought by him will not change the nature of suit and will not put any material effect on the original plaint. Learned trial Court dismissed the application on the basis of surmises and conjectures.

4. I have heard learned counsel for the parties and gone through the case file.

5. Order assailed herein is, *inter alia*, premised on the following reasoning:

“5. *The present application has been filed by the applicant/plaintiff on the ground that the applicant / plaintiff could not challenge the reply of notice of the defendant in the prayer clause and the above said omission in the prayer clause occurred due to some inadvertence, therefore, applicant/ plaintiff wants to amend the plaint by inserting the lines in the prayer clause stated in para no 3 of the application and has submitted that the proposed amendment is very much necessary for proper decision of the case. However, perusal of case file shows that notice pertains to 5.7.2017 and the reply was filed by defendant on 12.7.2017. Ld. Counsel for applicant / plaintiff has relied upon the authority titled as **Sarwan Kumar Mittal versus Smt. Vibha Gupta and another, Punjab Law Reporter VOL CLXXIX- 2015(3)** wherein the Hon'ble High Court observed that:-*

"Civil Procedure Code, 1908 (V), Order 6 Rule 17- Petitioner has already filed a suit for possession by way of specific performance of agreement to sell-only amendment sought in the plaint is to challenge the cancellation of the agreement to sell-in substance the relief remains the same- Challenge to cancellation of agreement to sell is ancillary with main relief. The amendment was necessitated in view of law that such a challenge is mandatory"

6. *But in the present case the above said authority is not applicable because the above said authority speaks about cancellation regarding agreement to sell. However, in the present case the defendant is not admitting impugned agreement to sell rather there is denial by the defendant regarding agreement to sell. The defendant has submitted that applicant / plaintiff obtained the signatures / thumb impression of the defendant on some blank paper and prepared the impugned agreement to sell by way of fraud. So, it means that there is no admission on the part of defendant regarding agreement and there is clear denial about the same. However, the above said authority speaks regarding cancellation of*

agreement to sell. Hence, the above said authority is not applicable to the present case.

7. *Further, it is also noticed that the reply was filed on 12.7.2017 and the present suit has been filed by applicant/plaintiff on 18.7.2017. Meaning thereby. applicant/plaintiff was having due knowledge and notice about the reply which was already filed prior to the institution of the present suit. However, applicant/ plaintiff did not sought amendment at the initial stage of the suit despite having knowledge and notice about the reply, rather the applicant/plaintiff moved the present application when the case has already been for plaintiff evidence and several effective opportunities have already been granted to the plaintiff to conclude his evidence. Further perusal of case file also shows that earlier also applicant / plaintiff had moved one application regarding amendment of plaint under order 6 rule 17 CPC before this court and the same was dismissed. This is the second application filed under order 6 rule 17 CPC by applicant/ plaintiff now and that too at a very later stage. So, it means that applicant / plaintiff wants to delay the trial of the case by moving such type of frivolous applications at one stage or other. Therefore, in view of above said discussion, application in hand is hereby dismissed being devoid of merits subject to payment of costs of Rs.2,000/- to be deposited in DLSA.”*

6. A perusal of above leaves no manner of doubt that there is no illegality or material irregularity, so as to exercise extraordinary revisional jurisdiction vested with this Court.

7. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement.

8. Dismissed.

January 18, 2023

vandana

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No