

247 (1st case)

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

**CR-76-2018 (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 02.01.2018 (Annexure P-3) passed by learned Civil Judge (Senior Division), Hathin, whereby first application dated 20.12.2017 (Annexure P-2) for amendment of plaint under Order 6 Rule 17 of CPC, was dismissed.

2. Learned counsel for the petitioner submits that the petitioner/plaintiff at the time of presenting the suit could not pray for refund the earnest money along with interest in the prayer clause of the plaint in alternative and also could not plead the alternative relief of restoring the possession of the suit land with the petitioner/plaintiff if the defendant succeeds in dispossessing the plaintiff/petitioner from the suit land. Therefore, the petitioner wants to add the above mentioned clause in the prayer clause of para No.12 of the original plaint.

2.1. Elaborating further, learned counsel for petitioner submits that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, the plaintiff may be permitted to amend his plaint, in the interest of justice and equity.

3. Per contra, learned counsel for respondent submits that the application seeking amendment of plaint is misconceived and has been filed with oblique motive to delay the proceedings.

4. I have heard competing arguments of learned counsel for the parties and perused the case file.

5. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. According to learned counsel for petitioner, plea of amendment sought by the petitioner will not change the nature of the suit and same will not put any material effect on the original plaint and will not cause any legal prejudice to the respondent.

6. What seems to have, *inter alia*, weighed with the learned Court below is the likely delay that would be caused in the trial. As regards delay, it is the petitioner's own suit and delay in trial is to his own peril. I deem it appropriate to grant just one opportunity to the petitioner to amend the plaint, subject to payment of costs.

7. In the premise, the instant revision petition is allowed. Impugned order dated 02.01.2018 (Annexure P-3) is set aside and subject to payment of Rs.10,000/- as costs to be paid to the defendant/respondent, which shall be the condition precedent. If the costs are not paid as directed, the impugned order shall stand restored.

January 18, 2023
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No