

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(112)

CR-1356-2023

Date of Decision : March 01, 2023

Mohan Dutt and another

.. Petitioners

Versus

Sunita and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ravinder Malik, Advocate, for the petitioners.

HARSIMRAN SINGH SETHI J. (ORAL)

Present civil revision petition has been filed against the order dated 30.01.2023 (Annexure P-4) passed by the Civil Judge (Sr. Division), Samalkha by which, application filed by the petitioners-plaintiffs for amendment of the plaint, has been rejected.

Learned counsel for the petitioners argues that while filing the civil suit, which was for the specific performance of an agreement to sell dated 06.11.2017, the petitioners-plaintiffs failed to mention that a sum of Rs.11 lacs was paid to the respondents-defendants through bank account, hence, the said amendment was sought to be done in the plaint, which has been rejected arbitrarily by the trial Court, hence, the said impugned order needs to be set aside with further direction to the Court below that the amendment sought in the plaint be allowed.

Learned counsel for the petitioner submits that as the

amendment sought was only in the shape of correction and very essential for the proper adjudication of the claim between the parties and no evidence was required to be produced, the said amendment should have been allowed by the trial Court keeping in view the settled principle of law.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Before proceeding to decide the prayer of the petitioners-plaintiffs on merits, it may be noticed that the amendment which is sought to be done in the plaint is at the fag end of the suit as parties have already led their evidence and the case is now fixed for final arguments.

The application, which has been filed for amendment of the plaint is for recording a particular fact, which, according to the applicant, was inadvertently missed while filing the plaint. In respect of the said additional fact, argument of the petitioners that non-mentioning of payment of Rs.11 lacs through bank account as earnest money was inadvertent, cannot be accepted. Why the said inadvertent missing of the fact from the plaint did not come to the notice of the petitioners when the written statement was filed by the defendants denying the receipt of any earnest money. Further, no such plea was taken by the petitioners during the entire trial and now at the fag end of the suit, the present application was moved. Under Order 6 Rule 17 of the CPC, the amendment of the pleadings can only be allowed in case, the Court comes to the conclusion that inspite of due diligence, the said fact could not be raised and that too only when the amendment is sought before the trial has commenced.

Further, nothing has been shown either to the trial Court or even before this Court that despite “due diligence” the said fact of payment

of Rs.11 lacs could not come to the notice of the petitioners so as incorporate the said fact in the plaint before the trial commenced. The fact sought to be incorporated is being termed as a material fact, however, nothing has come on record as to why the said material fact did not come to the notice of the petitioners after the written statement was filed, issues were framed or the evidence was being led by the petitioners, hence, the ingredients, which are needed to allow the application filed under Order 6 Rule 17 of the CPC, are missing in the present case.

In the present case, not only the trial had commenced but it is at the fag end as it is conceded before this Court that both the parties have already led their evidence and the case is fixed for the final arguments. Hence, keeping in view the provisions of law under which the amendment is sought, coupled with the facts of the present case, at the fag end, the amendment could not have been allowed by the trial Court and there is no infirmity with the impugned order.

Learned counsel for the petitioners submits that keeping in view the order passed by the Hon'ble Supreme Court of India in ***Civil Appeal No.5168 of 2005 titled as Sajjan Kumar vs. Ram Kishan, decided on 22.08.2005***, the amendment of the plaint should have been allowed by the trial Court. The judgment of the Hon'ble Supreme Court of India in ***Sajjan Kumar's case (supra)*** will not applicable in the present case for the reason that in ***Sajjan Kumar's case (supra)***, the description of the suit property was sought to be corrected by way of amendment. The description of the suit property was given in the plaint, which was given in the rent note, which was found to be incorrect at a later stage and the amendment

was sought.

The fact in *Sajjan Kumar's case (supra)* are entirely different as compared to the present case. The fact which is sought to be brought on record was well within the knowledge of the petitioners right from the day one but they did not exercise the said right of amendment before the trial began. Hence, the judgment being relied upon by the learned counsel for the petitioners in *Sajjan Kumar's case (supra)* is not applicable in the facts and circumstances of the present case and no benefit of the said judgment can be given in favour of the petitioners.

Similarly, the reliance being placed upon by the learned counsel for the petitioners in the judgment of the Coordinate Bench of this Court in *SAO No.38 of 2005 titled as Rachhpal Singh vs. Harswaran Singh and others, decided on 07.08.2006*. The same was entirely on different facts and did not relate to the amendment of the plaint at the fag end of the suit.

No ground is made out for any interference called by this Court.

Dismissed.

March 01, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No