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119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2090-2023
Date of Decision: 10.04.2023

Punjab State Warehousing Corporation and another Petitioners

Versus

Khushal Chand Vohra and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Parambir Singh, Advocate,
for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.02.2023 (Annexure P-9) passed by the Civil Judge (Senior Division), Gurdaspur, whereby the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the petitioners for amendment of the written statement to the amended plaint has been dismissed.

It is submitted by the learned counsel for the petitioners that since the plaint itself was amended by the plaintiffs, therefore, the petitioners-defendants were also required to file the amended written statement. The same was filed; as well. However, there was some deficiency left in the written statement which the petitioners tried to rectify by seeking amendment of the written statement filed to the amended plaint. In the amendment, the petitioners only sought to take up the preliminary

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objections qua non-joinder of the necessary party. The same has wrongly been declined by the Court below. Learned counsel has further submitted that the Trial Court has wrongly compared the issue of objections being raised by the petitioners qua non-joinder of the necessary party with the onus of proof qua the fact of conduct of the FCI being upon the plaintiffs. The consequence of these two aspects would be totally different. Hence, the amendment of the written statement should have been permitted by the Trial Court.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondents; at this stage.

Having heard learned counsel for the petitioners and having perused the case file, this Court finds that the petitioners were duly granted opportunity to file the amended written statement after the plaint was permitted to be amended by the Court. That opportunity was even availed by the present petitioners-defendants to file the amended written statement. Now, the petitioners are seeking amendment of the earlier written statement on the ground that the earlier counsel had not taken due care to include the preliminary objections. This can hardly be a ground to claim amendment, as such. In view of these facts, this Court does not find any *ex facie* impropriety in the order passed by the Trial Court, as such.

However, the law of procedure is handmade to advance the interest of the substantial justice. The substantial justice is better served

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when the parties are heard-out totally; instead of exclusion of hearing to parties. After the amended plaint was filed, the suit has not proceeded any further substantially. Moreover, the defendants should be granted full opportunity to raise whatever objections they want to raise qua the maintainability of the suit, so as to avoid any other consequences only for this reason. Hence, it would not be unjustified to grant opportunity to the petitioners to amend the written statement, however, by putting them under an appropriate financial burden; so as to make them realize their mistake of wasting time of the Court.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is directed to permit the petitioners to amend the written statement as pleaded in the application filed before that Court, however, subject to payment of Rs.5,000/- as costs; to be deposited by the petitioner with the Institute for the Blinds, Sector 26, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid permission to the petitioners only on production of the receipt of the costs having been deposited by the petitioners, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

10.04.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No