

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1898-2022 (O&M)
Date of decision: 11.04.2023

PURSHOTAM LAL GOEL AND ORS
VS

...Petitioners

ARVIND SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raghav Sharma, Advocate,
For the petitioners.

None for respondent No.1, despite service.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 22.02.2022 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Kurukshetra whereby, application filed by petitioner-defendants under Order 6 Rule 17 CPC for amendment of written statement, was dismissed.

2. Learned counsel for the petitioners submits that respondent No.1 herein/plaintiff filed a suit for declaration and mandatory injunction. He submits that application under Order 6 Rule 17 CPC for amendment of written statement was filed with the averments that at the time of filing of written statement, the objection regarding jurisdiction was not taken by defendants. The dispute is related to the use of Trade Mark and per Section 134 of Trade Marks Act 1999, all the suits related to infringement etc. are to be instituted before District Court, but their objections were left inadvertently. He submits that while passing the impugned order (Annexure P-6), learned Court below erred in observing that Issue No.2 *qua* maintainability already stood framed. He further submits that he wants to

amend the written statement not *qua* the issue of maintainability in its present form but *qua* maintainability before the Appropriate Forum.

2.1 According to learned counsel, impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioners may be permitted to amend their written statement in the interest of justice and equity.

3. Respondent No.1 has been served. Despite service, none has put in appearance on his behalf, which is suggestive of the fact that he does not want to contest the revision petition.

4. Vide order dated 24.01.2023, learned counsel was directed to serve the unserved respondents through counsel representing them in the Court below. As per office report, no steps have been taken to serve the unserved respondents. Given the nature of order being passed, there is no necessity to serve remaining respondents, as no serious prejudice would be caused to them, who are otherwise pro forma respondents. Service on remaining respondents is exempted at this stage.

5. I have heard learned counsel for petitioners and perused the case file.

6. Rules of procedure are handmaid of justice. They cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by amending the written statement ought not to be taken away by the Court except in a case of their deliberate omission/failure to amend written statement more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioners herein, unless afforded an opportunity to amend written

statement. Trial in the suit may lead to unjust consequences in the absence of an opportunity to the petitioner-defendants to amend written statement.

7. Learned counsel for petitioner-defendants undertakes to file the amended written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

8. Since the nature of amendment does not amount to change of the defence on the part of petitioner-defendants and is merely technical in nature and trial is at nascent stage and defendants’ evidence is yet to take place, I deem it appropriate to grant one opportunity to petitioner-defendants to file amended written statement, subject to costs of Rs.10,000/- to be paid to plaintiff/respondent No.1, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No