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

CR-2706-2023 (O&M)

Date of Decision: 02.05.2023

Deepak Kumar

...Petitioner

Versus

Subhash Chander Sanan and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Swarn Tiwana, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 03.04.2023 (Annexure P-6) passed by Ld. Civil Judge (Jr. Division), Ludhiana, whereby the application under Order 6 Rule 17 CPC for amendment of application filed under Order 9 Rule 13 CPC by petitioner/defendant No.1, was dismissed.

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

2.1. Respondent No.1 filed a suit for mandatory injunction directing the defendants to stop using and occupying portion of building No. H.M.325, Jamalpur Colony, Ludhiana. The said suit was decreed with costs vide judgment and decree dated 30.07.2007 and petitioner was directed to stop using and occupying any portion of the suit property and further restrained from interfering into the peaceful possession of respondent No.1 in suit property.

2.2. Respondent No.1 had filed execution application to initiate proceedings under Order 21 Rule 32 CPC against the petitioner stating that petitioner was violating the decree and trying to occupy the room as shown red in the site plan now got prepared by him and he petitioner forcibly placed his luggage in the room.

2.3. Petitioner came to know about the passing of *ex-parte* decree in the year 2021 i.e. 24.04.2021 on receiving summons and then filed an application for setting aside judgment and decree dated 30.07.2007. He has also filed an objection to the said execution application.

2.4. Thereafter, the petitioner filed an application under Order 6 Rule 17 CPC for amendment of application under Order 9 Rule 13 CPC as due to oversight, the fact regarding moving criminal complaint against respondent No.1 before the SHO, Police Station, Focal Point was not got mentioned in the initial application. Respondent No.1 filed reply to the said application. Ld. Court below vide impugned order dismissed the application moved by petitioner for amendment of application under Order 9 Rule 13 CPC.

3. Learned counsel for petitioner would argue that the delay was on the part of Ld. Trial Court as petitioner had filed the application when statement of AW1 Deepak Kumar was going on and the petitioner never tried to delay the trial and rather the application was dismissed by Ld. Trial Court after four months of concluding the evidence of petitioner.

4. Heard.

5. Given the nature of order being passed, there is no necessity to issue notice to the respondents, as no serious prejudice would be caused to them. Notice to respondents herein is thus dispensed with.

6. Having seen the nature of amendment to be carried out in the application under Order 9 Rule 13 CPC, I am of the view that the same would not change the defence and merely an incidental fact is sought to be pleaded.

7. Be that as it may, on a Court query, learned counsel for petitioner has undertaken that since the evidence has already been closed, he will not seek any further opportunity to lead additional evidence *qua* amendments sought to be made.

8. In the premise, the proposed amendment is allowed as no prejudice would be caused to the respondent. Ld. Trial Court to proceed further in accordance with law. Petitioner will be bound by the undertaking given by his counsel.
9. Revision stands allowed in above terms.
10. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 02, 2023
ashish

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