

CR-4204 of 2023

2023:PHHC:097597

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

CR-4204 of 2023

Date of decision: 28.07.2023

Mukhtiar Singh

.....Petitioner

Versus

Jagir Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Veneet Sharma, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred by the plaintiff-petitioner under Article 227 of the Constitution of India impugning the order dated 26.05.2023 passed by the Court of learned Civil Judge (Junior Division), Amritsar, whereby application filed by the petitioner under Order 6 Rule 17 CPC has been dismissed.

2. Brief facts, leading to the filing of the present revision petition are to the effect that petitioner filed a suit for specific performance of agreement to sell dated 07.03.2008. During the pendency of the suit, petitioner filed an application dated 21.02.2023 under Order 6 Rule 17 CPC for amendment of the plaint. Respondents No.5 and 6 filed reply to the said application. The application filed by the petitioner under Order 6 Rule 17 has been dismissed by the Court of learned Civil Judge (Junior Division), Amritsar, vide order dated 26.05.2023, which has been impugned herein.

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3. Learned counsel for the petitioner contended that the trial Court has wrongly dismissed the application of the petitioner. The amendment sought by the petitioner is merely clarificatory in nature and is an explanation of the pleadings which are already on record. He further submitted that amendment of plaint can be allowed at any stage of the case. He further submitted that the amendment sought by the petitioner in the plaint is just and necessary for adjudication of the case, therefore, impugned order is liable to be set aside. In support of his contentions, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another, 2023(1) R.C.R.(Civil) 851.***

4. I have heard learned counsel for the petitioner and perused the record.

5. In ***Vidyabai and others, (2009) 2 SCC 409***, Hon'ble Apex Court observed as under:-

"10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6, Rule 17 of the Code, which reads as under:

'Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must

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come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial."

6. There is no dispute with regard to the proposition of law laid down by the Hon'ble Supreme Court in the case of ***Life Insurance Corporation*** (supra) that amendment of pleadings, which is just and necessary for adjudication of the case, can be allowed at any stage of proceedings. However, such amendment cannot be allowed after commencement of the trial unless the Court comes to the conclusion that in spite of due diligence the party could not have pleaded the matter, sought to be pleaded through amendment, before commencement of trial. In the present case, earlier also the petitioner had moved applications under Order 6 Rule 17 CPC twice, which were allowed. Thus, it does not lie in the mouth of the petitioner that he was not aware of the facts now sought to be pleaded through amendment. The evidence of both the parties has been concluded and the case is at the fag end at arguments stage. It appears that the present application has been moved by the petitioner only to delay the proceedings.

7. In view of the above, I do not find any illegality or perversity in the impugned order. Hence, the revision petition is dismissed in limine.

28.07.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No