

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1477-2022 (O&M)
Date of decision: 20.01.2023

RAMESH AND ANR ...Petitioners
VS
DHARAMPATI ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Priyanka Vij, Advocate for
Mr. Amit Kumar Jain, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Revision petition herein is directed against the impugned order dated 17.11.2021 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division) Jind, whereby in a suit for possession filed by respondent, learned trial Court dismissed the application for amendment of written statement filed by the petitioner/defendants.

2. Learned counsel for the petitioners submits that respondent-Dharampati, mother of petitioner No.1 and mother-in-law of petitioner No.2, filed a suit for possession *qua* the suit property i.e. residential house No.559/18, situated in Shiv Colony near Manav Kalyan Aashram, Safidon Road, Jind measuring 8 Marla and 3 Sarsai with the averments that she is owner of the suit property and that present petitioners have no right in the suit property and they may be evicted from the suit property and possession be given to her. Present petitioners in their written statement took various preliminary objections regarding maintainability of suit, cause of action, locus standi, suit being bad for want of jurisdiction and insufficient court fee. He submits that at the time of final arguments, it transpired that one

document i.e., family settlement dated 21.10.2013 was left out to be mentioned in the written statement. As such, the present petitioners moved an application for amendment of the written statement, which was dismissed by learned trial Court vide order impugned herein.

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.

2.2. Learned counsel for petitioners further submits that procedure is handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. According to learned counsel, the suit is at preliminary stage and no prejudice would be caused to the plaintiff/respondent if the petitioners are permitted to amend their written statement. He further submits that petitioners do not want to lead any further evidence, in case the amendment sought is allowed.

3. I have heard learned counsel for the petitioner and perused the case file.

4. In the revision petition, it is inter alia, mentioned that the documents (*Ikrarnama aapsi* dated 21.10.2013) to be incorporated in the written statement by its amendment has already been proved on record. I am of the view that provisions of Order 8 Rule 1 CPC, though are to be strictly adhered to, but Court could have permitted to amend written statement at the instance of defendant subject to terms and conditions, as aforementioned provisions of law have been held to be directory in nature in view of law laid down by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should be liberal while interpreting the

aforementioned provisions of Civil Procedure Code and should not be too harsh.

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

6. For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioner-defendants to file amended written statement, subject to costs of Rs.10,000/- to be paid to the plaintiff/respondent, 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, dispensing with notice to the respondents. In view of the averments in the revision petition the document to be incorporated in written statement by its amendment has already been proved on record, this order will not amount to any permission to the petitioners for leading further evidence to prove that document.

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

(ARUN MONGA)
JUDGE

20.01.2023
vandana

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