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

(115)

CR-5703-2024

Date of Decision: - 27.09.2024

Mubarik Rai (deceased) through his LRs**....Petitioners****Versus****Rajinder Pal Sachar (deceased) through his LRs****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Gaganvir Singh Gill, Advocate
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed by the defendant under Article 227 of the Constitution of India for setting aside the impugned order dated 23.08.2024 (Annexure P-1) passed by the Civil Judge (Junior Division), Patiala in CM/643/2018 titled as 'Mubarik Rai Vs. Rajinder Pal Sachar' pending for 03.10.2024, whereby the application dated 26.04.2023 (Annexure P-13) filed under Order 6 Rule 17 CPC for amendment of the application under Order 9 Rule 13 CPC has been dismissed.

2. Brief facts of the case are that the respondent (now represented through his LRs) filed a suit for declaration to the effect that the respondent was the owner in possession of the property in question.

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The present petitioner/defendant (now represented through his LRs) were proceeded against ex-parte and vide the judgment and decree dated 08.10.1999 (Annexure P-3). The suit filed by the respondent-plaintiff was dismissed. An appeal was filed by the respondent-plaintiff and even in the said appeal, the present petitioner/defendant was proceeded against ex-parte by observing that notice in the appeal was issued to the petitioner/defendant and since he was proceeded ex-parte before the trial Court, his presence was dispensed with, vide order dated 16.03.2000 (Annexure P-6), passed by the District Judge, Patiala and the said appeal was allowed and the suit of the respondent-plaintiff was decreed.

3. The petitioner had initially moved an application under Order 41 Rule 21 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 19.03.2002 passed by the 1st Appellate Court, but vide order dated 01.03.2018 (Annexure P-8), the same was withdrawn with liberty to file a fresh application under Order 9 Rule 13 CPC before the trial Court. Thereafter, an application dated 13.07.2018 under Order 9 Rule 13 CPC read with Section 151 CPC (Annexure P-9) was filed by the petitioner before the trial Court on 16.07.2018 and along with the said application, an application under Order 5 of the Limitation Act for condonation of delay in filing the said application was also filed. A reply was filed to the said application (Annexure P-11) as well as to the application filed under Section 5 of the Limitation Act (Annexure P-12) by the respondent-plaintiff. In the reply dated 24.07.2019, the respondent-plaintiff, apart from other pleas, had raised a plea that the application



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dated 13.07.2018 had been moved after a period of 19 years from the date of passing of the judgment and decree dated 08.10.1999. Issues in the said application were framed on 03.09.2019 and thereafter, even two witnesses of the petitioner in the said proceedings have been examined and it is thereafter on 26.04.2023, an application under Order 6 Rule 17 read with Section 151 CPC for the amendment of application under Order 9 Rule 13 CPC was filed in order to incorporate para 5-A, which reads as under: -

*“That on **27-8-2015** applicant Rajesh Sachhar in routine went in the portion of house in question which is in their possession to take some articles and when he was sitting in room suddenly wife of Rajinder Pal Sachhar, her daughter along with 4/5 ladies forcibly entered in the room and started throwing articles out of room and further threatened him that they will involve him in false case. Later on under the influence of respondents, a false case was registered against Rajesh Sachhar by the police authorities. Apprehending his arrest in false case, Rajesh Sachhar filed an anticipatory bail application before Session Judge, Patiala. During the arguments, complainant's counsel as well as public prosecutor produced copy of Judgment and decree dated 19-3-2002 passed by Sh Inderjit Kaushik, ADJ, Patiala. Applicants were not aware of said Judgement and decree dated 19-3-2002 prior to the date **29-9-2015** when it was referred during arguments of bail application. After that, applicants applied for certified copy of same on **29-9-2015** which was received on **7-10-2015**. Thereafter, Applicants filed an application under Order 9 rule 13 CPC without any delay from the date of knowledge. Hence the present application is filed with in limitation from the date of knowledge.”*

4. A reply was filed to the said application under Order 6 Rule 17 CPC on 03.05.2023 (Annexure P-14) and it was stated that the said application was not maintainable as the provisions of Order 6 Rule 17 of

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CPC were not applicable with respect to an application under Order 9 Rule 13 CPC and the provisions of Section 151 CPC in the present case could not be invoked. It was further stated that in the present case, the issues were framed on 03.09.2019 and one of the issue was “whether the application is barred by limitation” and a specific application under Section 5 of the Limitation Act had already been filed and thereafter, 24 opportunities were availed by the petitioner and only two witnesses had been examined and thereafter, an application for correction of the affidavit of one Rajni Sharma was filed, which was allowed on 03.10.2022 and the petitioner took four dates to submit the correct affidavit and thereafter, the present application has been moved. It was also stated that the same has been done only to delay the proceedings and that since the trial in the application filed under Order 9 Rule 13 CPC has already been commenced, thus, the petitioner cannot be permitted to make the amendment with respect to the facts which were in the knowledge of the petitioner prior to the filing of the application. It was further stated that in case the said application is allowed, the same would result in denovo trial and mere change of counsel cannot be a ground for seeking amendment.

5. The trial Court vide order dated 23.08.2024 dismissed the said application and observed that the amendment sought to be made was after the commencement of the trial and the averments sought to be made were already in the knowledge of the petitioner and thus, as per the proviso of Order 6 Rule 17 CPC, the same cannot be permitted. It was

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further observed that the petitioner had already availed several opportunities to produce his evidence and accordingly, the application was dismissed and the matter was adjourned to 10.09.2024 for remaining evidence of the petitioner subject to last opportunity. The zimni order dated 10.09.2024 is not on record, but learned counsel for the petitioner has submitted that on the said date an adjournment was prayed for on behalf of the petitioner and now the case is pending for 03.10.2024.

6. Learned counsel for the petitioner has submitted that in the present case, a new counsel was engaged and after the new counsel studied the matter in detail, it was found that the amendment was necessary so as to give proper details of the date of knowledge. It is further prayed that the said application be allowed and the impugned order be set aside.

7. The argument raised on behalf of the petitioner is meritless and cannot be accepted.

8. It is not in dispute that in the present case, after passing of the order dated 01.03.2018, the petitioner had filed an application under Order 9 Rule 13 CPC on 16.07.2018 for setting aside the exparte judgment and decree of the trial Court dated 08.10.1999. It is also not in dispute that the issues were framed in the said application on 03.09.2019 and thereafter, two witnesses of the petitioner have been examined. In the reply to the said application (Annexure P-14), it was specifically averred by the respondent-plaintiff that 24 opportunities have been taken by the petitioner to lead his evidence in the proceedings under Order 9 Rule 13

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CPC but only two witnesses have been examined and the said aspect has also not been disputed before this Court. Moreover, in the impugned order dated 23.08.2024 it has been recorded that several opportunities were granted to the petitioner and he has failed to conclude his evidence till date. It would be relevant to note that the averments which the petitioner is seeking to incorporate by moving an amendment application dated 26.04.2023, after the trial has commenced, were with respect to the year 2015 and the said averments were within the knowledge of the petitioner/defendant and thus, the trial Court has rightly observed that in view of the proviso to Order 6 Rule 17 CPC, the said amendment could not be allowed. A perusal of the proviso to Order 6 Rule 17 CPC shows that no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the present case, it is apparent that the petitioner could have raised the pleas, which are raised in the amendment, prior to the filing of the application dated 13.07.2018 and at any rate, prior to the commencement of the trial, which had commenced on the framing of issues i.e. on 03.09.2019. It is thus apparent that there was no due diligence on behalf of the petitioner in the said regard. Moreover, the petitioner along with application under Order 9 Rule 13 CPC has filed an application under Section 5 of the Limitation Act and had already led evidence of two witnesses in support of the same and has further taken several opportunities to lead his evidence. Thus, at this stage, the said

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amendment cannot be allowed and would further result in delaying the matter. Moreover, the mere change of counsel cannot be taken as a valid ground to seek amendment, more so, the one which is hit by the proviso to Order 6 Rule 17 CPC.

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order dated 23.08.2024 (Annexure P-1) passed by the Civil Judge (Junior Division), Patiala, is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

September 27, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes