



CR-6149-2024

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(123)

CR-6149-2024

Date of Decision: - 23.10.2024

Krishan Goyal

....Petitioner

Versus

Jaswant Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Atul Jain, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the impugned order dated 29.08.2024 (Annexure P-8) passed by the Additional Civil Judge (Sr. Division), Patiala, whereby the application of the petitioner under Order 6 Rule 17 CPC for amendment of written statement is dismissed in Civil Suit bearing No.CS/1209/2019 titled as 'Jaswant Singh Vs. Krishan Goyal'.

2. Brief facts of the case are that the respondent-plaintiff had filed a suit for recovery of Rs.36,37,725/-, i.e., Rs.29,57,500/- as principal and Rs.6,80,225/- as interest @ 12% per annum. It was the case of the plaintiff in the plaint that he was an agriculturist and was doing the work

**CR-6149-2024****-2-**

of agriculture along with his family members and the defendant had agreed to sell the land measuring 126 kanals 9½ marlas @ Rs.21,90,000/- per acre and out of the total consideration, the defendant had received Rs.29,57,500/- as earnest money from the the plaintiff and had executed an agreement to sell dated 11.08.2017. It was further pleaded that sale deed of the land measuring 20 kanals and of the total land executed in the name of wife of the plaintiff vide Wasika No.11177 dated 28.12.2017, but however, the sale deed regarding the remaining land was not executed and thus, the plaintiff had filed the suit for recovery of earnest money along with interest.

3. A written statement dated 03.03.2021 (Annexure P-2) was filed by the petitioner-defendant, in which, it was stated that the agreement to sell dated 11.08.2017 executed by the petitioner-defendant in favour of the plaintiff was not disputed and even the amount of Rs.29,57,500/- having been received by him as earnest money was also not disputed. It was the case of the petitioner that it was the plaintiff who had failed to get the sale deed executed of the remaining land and had failed to pay the balance sale consideration. The issues in the present case were framed on 26.07.2022, as is apparent from a perusal of the impugned order, which fact has not been disputed before this Court. The plaintiff also submitted his affidavit of examination in chief and the said plaintiff was partly cross-examined, which fact has also not been disputed before this Court and thus, the trial had commenced. The application dated 25.10.2023 under Order 6 Rule 17 CPC read with Section 151 CPC

**CR-6149-2024****-3-**

for amendment of the written statement was filed after a period of 2 years and 7 months from the date of filing of the original written statement and in the same, completely different facts were sought to be incorporated. There was nothing in the application to show that the said facts could not have been pleaded prior to the commencement of the trial in spite of due diligence. A reply was filed to the said application, in which, it was specifically stated that since the cross-examination of the plaintiff had already been partly recorded, thus, the trial had commenced and the petitioner was trying to change his defence, which was not permissible.

4. The trial Court vide the impugned order dated 29.08.2024 (Annexure P-8) had observed that the application for amendment was being filed after much delay, after the framing of the issues and after part cross-examination of the plaintiff had taken place. It was further observed that there was no reason mentioned by the petitioner-defendant to show as to why the amendment now sought to be incorporated could not have been incorporated in the original written statement and that completely different facts and in effect a new defence was sought to be set up by virtue of the proposed amendment and that the application was neither bona fide nor could it be shown to the Court that in spite of due diligence, the said facts could not have been incorporated in the original written statement. It is the said order which has been challenged before this Court.

5. Learned counsel for the petitioner has submitted that it is after discussing the matter with the defendant at the time of preparing the

**CR-6149-2024****-4-**

cross-examination of PWs that it was found by the counsel for the defendant that proper explanation with respect to the agreement to sell in question was not given in the original written statement and the same was sought to be given vide the proposed amendment. It is further submitted that although, as per the said amendment, the defence of the petitioner was sought to be changed and certain admissions were sought to be withdrawn, but the correct facts have been stated in the said amendment and it is prayed that the application be allowed and the petitioner be permitted to incorporate the said amendment. It is stated that the case is still at the initial stage as the cross-examination of the plaintiff has not been completed and thus, no prejudice would be caused to the plaintiff.

6. This Court has heard learned counsel for the petitioner and has perused the paper-book.

7. It is not in dispute that the issues in the present case have been framed on 26.07.2022 and the examination-in-chief of the petitioner has already been tendered and further the petitioner has also been partly cross-examined. Thus, it is apparent that the trial has already commenced. The proviso to Order VI Rule 17 of CPC specifically provides 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. In the present case, it is not disputed before this Court that all the averments which were sought to be made in the proposed amendment were in the knowledge of the defendant/petitioner at

**CR-6149-2024****-5-**

the time of filing of the original written statement dated 03.03.2021 and thus, it cannot be said that in spite of due diligence, the said averments could not have been raised in the original written statement. The application under Order 6 Rule 17 CPC is thus squarely hit by the proviso as mentioned under Order 6 Rule 17 CPC.

8. It would be further relevant to note that in the original written statement, the agreement to sell dated 11.08.2017 had been specifically admitted by the petitioner and also the receiving of the earnest money of Rs.29,57,500/- was admitted as is apparent from a bare reading of para 3 of the original written statement dated 03.03.2021. However, in the amendment sought, it had been stated that although, in the agreement to sell in question it had been stated that a sum of Rs.29,57,500/- had been paid to the defendant as earnest money by the plaintiff, but actually nothing was paid. The same amounts to withdrawal of the admission made in the original written statement, which cannot be permitted in the facts and circumstances of the present case. The petitioner-defendant has already taken a specific defence in the original written statement and the trial has already commenced and thus, the trial Court has rightly dismissed the application by stating that completely different facts and a new defence is sought to be set up and that the amendment sought is not bona fide. Moreover, the application for amendment dated 25.10.2023 has been filed after a period of 2 years and 7 months from the filing of the original written statement and the same has apparently been filed to delay the suit, which has been filed for

**CR-6149-2024****-6-**

recovery of an amount of Rs.36,37,725/-

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order dated 29.08.2024 (Annexure P-8) passed by the Additional Civil Judge (Sr. Divn.), 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.

October 23, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes