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

CR-6733-2024

Date of decision: 20.11.2024

Raj Pal

...Petitioner

Versus

Sanjiv Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rohit Dheer, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 21.08.2024 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Patti whereby an application under Order 6 Rule 17 CPC filed by defendant No.1 for seeking amendment of the written statement, has been rejected.

2. Learned counsel for the petitioner has submitted that the petitioner wishes to amend the written statement so as to make the averments with respect to the agreement-cum-compromise dated 22.10.2015, which as per the case of the petitioner, was effected before the SHO, Police Station City Patti, District Tarn Taran and for the said purpose, wishes to amend para 5 of the preliminary objections of the written statement and also para 7 on merits of the written statement. It is further submitted that due to lack of communication, inadvertence as well as due to lapse of earlier counsel of the petitioner, the said facts could not be incorporated in the written statement. It is submitted that the application filed by the petitioner is meritorious and same deserves to be



allowed and the impugned order deserves to be set aside.

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

4. A perusal of the impugned order dated 21.08.2024 would show that in the present case, the respondent-plaintiff had filed a suit for specific performance of the agreement to sell dated 12.09.2015 with respect to the suit property measuring 29 kanals 15 marlas and also for permanent injunction restraining the defendants from alienating the suit property in which the present petitioner-defendant No.1 had appeared on 04.07.2017 and written statement was filed on 06.09.2018 and thereafter, the issues were framed on 21.11.2019 and the case was fixed for evidence of the plaintiff. It has further been observed that the plaintiff had led his evidence and had also closed his evidence on 11.10.2022 and thereafter, the petitioner had appeared as DW1 and tendered his evidence in examination-in-chief on 07.12.2022 and thereafter, on 05.01.2023, he had moved an application under Order 12 Rule 8 CPC which was disposed of on 08.02.2023 and the case was adjourned to 23.02.2023 for further evidence of defendant No.1. It had further been observed that, on 23.02.2023, another application under Section 65 of the Indian Evidence Act was filed by the present petitioner-defendant No.1 which was allowed on 22.11.2023 and thereafter, the case was adjourned to 07.12.2023 for evidence of defendant No.1 and instead of leading his evidence, defendant No.1 had filed the present application on 28.02.2024. It was observed that once the trial had commenced, then, as per proviso to Order 6 Rule 17 CPC, the petitioner was required to show due diligence as to why he could not raise this matter before the commencement of the trial but in the



entire application, no such pleadings were made with respect to due diligence. It was further observed that once the suit had been filed by the plaintiff-respondent for specific performance of agreement to sell dated 12.09.2015, then, there was nothing on record to show as to how and in what manner, the proposed amendment was necessary and relevant for the proper adjudication of the case.

5. Proviso to Order 6 Rule 17 CPC has been incorporated on 01.07.2002 and the said provision reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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.”

6. A perusal of the above provision would show that it has been specifically mentioned in the proviso 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 raise the matter before commencement of the trial.

7. The Hon’ble Supreme Court in the case of **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others**, reported as **2006(12) SCC 1**, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended),



the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.

8. In the present case, it is not in dispute that the alleged document, regarding which amendment in the pleadings is sought, was dated 22.10.2015 which was effected before SHO, Police Station Patti, District Tarn Taran and thus, is before the date on which the written statement was filed by the petitioner i.e., 06.09.2018. The reason given for non-incorporation of the said pleadings in the written statement is stated to be “lack of communication, inadvertence as well as due to lapse of earlier counsel” and all the said terms are in direct contradiction to the term “due diligence” and in case the said argument on behalf of the petitioner is taken to be true on its face value, then, it shows that there was no due diligence on behalf of the petitioner and thus, the amendment sought, is hit by the proviso to Order 6 Rule 17 CPC. The conduct of the petitioner, as noticed by the trial Court, which is not disputed before this Court, would also show that every endeavour was made by the petitioner to delay the suit for specific performance filed by the respondent. In case, the present amendment application is allowed, the plaintiff would suffer great prejudice as the same would result in further delay of the proceedings.

9. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the impugned order dated 21.08.2024 is in accordance with law and deserves to be upheld and thus, the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

20.11.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No