

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****202****CR-672-2018 (O&M)****Date of Decision : 24.02.2025**

Suresh Kumar

....Petitioner

VERSUS

Pavinder Nanda

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aayush Gupta, Advocate for the petitioner.

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate and
Mr. Vaibhav Sehgal, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging order dated 05.12.2017 whereby the application filed by the respondent herein under Order VI Rule 17 of the Code of Civil Procedure, 1908 has been allowed.

2. The brief facts relevant to the present *lis* are that Pavinder Nanda (plaintiff-respondent herein) filed a suit for declaration that the agreement to sell dated 25.05.2007 stood cancelled on account of default committed by the defendant-petitioner herein. Written statement was filed to the said suit. The defendant-petitioner herein also filed a counter-claim for possession of the suit property by way of specific performance of agreement to sell dated 25.05.2007. Written statement was filed by the plaintiff-respondent to the counter-claim. At the time of rebuttal evidence, an affidavit was filed by the plaintiff-respondent as Ex.PA/1 wherein a plea of hardship was also raised. An application was filed by the defendant-petitioner for deciding the admissibility of the contents of the affidavit

(Ex.PA/1) filed by plaintiff-respondent, which was disposed off vide order dated 23.05.2017 holding that the admissibility of the portions of the affidavit (Ex.PA/1) qua hardship would be decided at the time of final arguments. However, the defendant-petitioner was given the liberty to ignore those portions for the purposes of cross-examination without fear regarding any adverse inference being drawn against him. The defendant-petitioner herein cross-examined the said witness ignoring the portions pertaining to hardship. Subsequently, an application was filed by the plaintiff-respondent for amendment of the written statement to the counter-claim, which was allowed vide the impugned order dated 05.12.2017. Hence, the present revision petition challenging the impugned order dated. 05.12.2017.

3. Learned counsel for the defendant-petitioner would contend that the present application for amendment was filed at the stage when the matter was fixed for rebuttal evidence. It is further the contention that earlier the Court while deciding the admissibility of the affidavit (Ex.PA/1) submitted by Pavinder Nanda (plaintiff-respondent herein) at the time of rebuttal evidence had held that the issue regarding the admissibility would be decided at the time of final arguments qua the portions wherein the plea of hardship was raised and had granted the liberty to the defendant-petitioner herein to ignore those portions for the purposes of cross-examination. Learned counsel for the defendant-petitioner would further contend that keeping in view order dated 23.05.2017, the defendant-petitioner did not cross-examine Pavinder Nanda (plaintiff-respondent herein) qua the portions which pertained to hardship. However, now since the amendment to the written statement had been allowed permitting the plaintiff-respondent to raise the plea of hardship, the defendant-petitioner would be deprived of a

valuable right if he is not permitted to cross-examine Pavinder Nanda on the portions pertaining to hardship in his affidavit (Ex.PA/1).

4. *Per contra* learned senior counsel for the plaintiff-respondent would contend that the amendment is necessary as a plea of hardship is to be raised and since the said plea had not been raised in the written statement to the counter-claim, therefore, the necessity of filing the application. Learned counsel for the plaintiff-respondent has further relied upon a judgment of Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. & Ors. [(2022) 16 SCC 1]** to contend that in order to address all issues arising in the suit as well as to avoid multiplicity of litigation, the amendment has rightly been allowed.

5. Heard.

6. In the present case the amendment sought is only qua raising the plea of hardship. By way of amendment the plaintiff-respondent wanted to incorporate that the property was the only residential house of the plaintiff-respondent in which he was residing alongwith his family and he has spent about Rs.15,00,000/- on the construction of the house after entering into the agreement to sell with the defendant-petitioner and as such it would cause hardship to the plaintiff-respondent if he is not permitted to raise this plea. The plaintiff-respondent by way of the application for amendment only wants to raise the plea of hardship and dismissing the application would mean that a valuable defense of the plaintiff-respondent herein is denied. Keeping in view the nature of the amendment sought that the house in question is the only residential house of the plaintiff-respondent, this Court does not deem it fit to interfere with the order dated 05.12.2017. However, having said so, one more fact needs to be taken into

account that vide order dated 23.05.2017 the Court had observed that admissibility of portions of the affidavit tendered by Pavinder Nanda (plaintiff-respondent herein), (Ex.PA/1), pertaining to hardship would be decided at the time of final arguments and the defendant-petitioner herein was given liberty to ignore those portions for the purposes of the cross-examination. However, since the application for amendment has now been allowed and since the defendant-petitioner herein had not cross-examined the witness qua the issue of hardship, he would have to be granted one opportunity to cross-examine qua the portions which were earlier left out.

7. In view of the above, the defendant-petitioner is granted one opportunity to cross-examine Pavinder Nanda (plaintiff-respondent) qua the portions pertaining to hardship as stated in his affidavit (Ex.PA/1). It is made clear that the cross-examination shall be only limited to the portions qua which he was earlier granted liberty to ignore.

8. The present revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

24.02.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO