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

CR-7185-2018 (O&M)
Date of decision: 23.09.2025

Sukhmani Minar Lamba

...Petitioner

Versus

Chinar Lamba @ Shallu and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Mayur Kanwar, Legal Aid Counsel
Advocate for respondent No.1.

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 10.10.2018 (Annexure P-1) passed by the Civil Judge (Senior Division), Sri Muktsar Sahib whereby the application for amendment in the written statement filed by the petitioner/defendant No.4 has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

2. Learned counsel for the petitioner has submitted that in the present case, the written statement was filed by defendant No.4 on 29.08.2015 and thereafter, the petitioner had moved an application for amendment of the written statement on 20.08.2018, seeking to incorporate certain additional facts regarding the unregistered Will propounded by respondent No.1 in the plaint. It is submitted that all the facts sought to be incorporated in the amended written statement are merely an elaboration of



the plea already taken in the original written statement and are with respect to the facts which were already in existence at the time of filing of the initial written statement. It is submitted that the amendment sought is necessary for the proper and final adjudication of the case and that the case is still at an initial stage, as only the examination-in-chief of one plaintiff witness has been recorded, and since 2018, the Coordinate Bench of this Court had stayed the proceedings. It is submitted that the impugned order vide which the application has been dismissed deserves to be set aside and application filed by petitioner/defendant No.4 for amendment of the written statement deserves to be allowed.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1:-

3. Learned counsel for respondent No.1, on the other hand, has opposed the present revision petition and has submitted that the present suit was filed in the year 2012 and every endeavour has been made by the petitioner along with other defendants, more so defendant Nos.2 to 4, who are related to each other, to delay the proceedings. It is submitted that the issues were framed in the present case on 20.10.2015 and thereafter, an application under Order 9 Rule 7 CPC was filed by defendant No.2 for setting aside the ex parte proceedings. It is submitted that even defendant No.3 had filed an application for setting aside the ex parte proceedings and that defendant Nos.2 and 3 are mother and brother of defendant No.4. It is submitted that after the application filed by defendant No.3 was disposed of, the present application for amendment has been filed which is hit by the proviso to Order 6 Rule 17 CPC as the trial had already commenced and the facts which are mentioned in the application for amendment of the written



statement were already in the knowledge of the petitioner prior to the filing of the original written statement. It is submitted that the impugned order has been passed in accordance with law and deserves to be upheld.

ANALYSIS AND FINDINGS:-

4. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. It is not in dispute that the respondent No.1 had filed a suit for declaration to the effect that the plaintiff is owner in joint possession of the land in question in the year 2012. Respondent No.1 based her claim on a Will dated 28.03.1997, which was stated to have been executed by Harjinder Singh (the owner of the property) in her favour, and had also challenged Mutation No.1889. Other prayers had also been made in the suit. It would be relevant to note that there were six defendants in the suit. The present petitioner, who is daughter of Satinder Singh, was impleaded as defendant No.4. Mother of the present petitioner, who was widow of Satinder Singh was impleaded as defendant No.2 and son of Satinder Singh, who is brother of the present petitioner/defendant No.4, was impleaded as defendant No.3 in the suit. In the written statement, the present petitioner/defendant No.4 had taken a plea that the Will relied upon by respondent No.1/plaintiff was forged and a fabricated document, which had been prepared by the plaintiff in connivance with other persons and had further taken a plea that the said Will was not produced in the mutation proceedings.



6. Admittedly, the said written statement dated 29.08.2015 was filed on 31.08.2015 and the issues in the present case were framed on 20.10.2015 and thereafter, the case was fixed for evidence of the plaintiff. Defendant No.2, who was mother of the present petitioner, had moved an application under Order 9 Rule 7 CPC for setting aside the ex parte proceedings against her, which was dismissed in default and ultimately, the matter came before this Court and the said defendant No.2 was permitted to join the proceedings of the case from the stage where the case had reached. Defendant No.3, who is brother of the petitioner, had thereafter moved an application for setting aside the ex parte proceedings which was disposed of by the Court by granting liberty to defendant No.3 to join the proceedings. Thereafter, the present petitioner/defendant No.4 moved an application dated 20.08.2018 for amendment of the written statement. The said facts have been mentioned in the impugned order dated 10.10.2018, which have not been disputed before this Court. From the said facts, it is apparent that defendant Nos.2 to 4 have been moving in tandem to delay the adjudication of the suit filed by respondent No.1.

7. Learned counsel for the petitioner has very fairly submitted that amendments which are sought to be incorporated in the amended written statement were with respect to the facts which were already in existence at the time of filing of the written statement dated 29.08.2015. It is also not in dispute that on 17.08.2018, one witness i.e., plaintiff-Chinar Lamba had been partly examined in chief. Reference in this regard can be made to the zimni order dated 17.08.2018. It is thus, apparent that the trial had commenced prior to the date on which the application under Order 6 Rule 17 CPC was



filed. The trial Court had dismissed the application filed by the petitioner for amendment primarily on account of there being no due diligence on the part of the petitioner.

8. 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.”

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.

9. 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.



10. The Hon'ble Supreme Court in the case of **Vidyabai and others Vs. Padmalatha & another** reported as **2009(2) SCC 409**, had further observed that the proviso to Order 6 Rule 17 CPC restricts the power of the Court and it puts an embargo on the exercise of its jurisdiction and the Court's jurisdiction in a case where amendment is sought after the commencement of the trial is limited. In the said case, defendants therein had moved an application for amendment after issues had been framed and the plaintiffs' witnesses therein had filed affidavit by way of evidence and the trial Court had dismissed the application under Order 6 Rule 17 CPC whereas the High Court had allowed the said application under Order 6 Rule 17 CPC. The Hon'ble Supreme Court, after considering the law on the point and also after taking into consideration the proviso to Order 6 Rule 17 CPC had set aside the order of the High Court and had upheld the order of the trial Court dismissing the application. Additionally, it was observed that the High Court while setting aside the order did not satisfy the test of judicial review and it had not been found that the trial Court had exceeded its jurisdiction in passing the impugned order therein nor it had been found that there was any error of law committed by the trial Court. The law laid down in the abovesaid case would fully apply in the present case as it is not in dispute that there was no due diligence in filing the application for amendment and thus, amendment sought was hit by the proviso to Order 6 Rule 17 CPC.

11. The Hon'ble Supreme Court in the case of **"Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil"**, reported as **(2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227



of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

12. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

13. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

23.09.2025*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**