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

CR-757-2025

Date of decision: 05.02.2025

Raj Kumar Batra and another

...Petitioners

Versus

Kashish Batra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajesh Goyal, Advocate for the petitioners.

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 09.01.2025 and 23.01.2025 (Annexures P-4 and P-6) passed by the trial Court wherein amendment application of respondent No.1 was allowed and application of the petitioners for filing reply to the amendment application, after the passing of the order dated 09.01.2025 was dismissed.

2. Learned counsel for the petitioners has submitted that in the present case, respondent No.1 had filed a suit for declaration to the effect that he is owner in possession of the property in question, on the plea that the property was joint family property, inasmuch as, the parties constituted a joint hindu family. Subsequently, an application for amendment was filed under Order 6 Rule 17 CPC for including other properties, which as per the



case of respondent No.1 were also purchased from the joint funds. It is submitted that respondent No.1 had not been diligent in filing the application for amendment, inasmuch as, the suit was of the year 2018 whereas the application had been filed in the year 2022. It is further submitted that even the order dated 23.01.2025 to the extent that the petitioners have not been permitted to file reply to the said application under Order 6 Rule 17 CPC deserves to be set aside and the petitioners be permitted to file reply and the application under Order 6 Rule 17 CPC be decided afresh.

3. This Court has heard learned counsel for the petitioners and has perused the paper book and finds that the impugned orders are in accordance with law, and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that respondent No.1, who is a relative of the petitioners, had filed a suit for declaration to the effect that respondent No.1 is owner in possession of the property in question to the extent of 1/6th share being his share in the joint family property and a consequential relief of restraining the defendants from interfering into the peaceful possession of the plaintiff was also sought. The said plea was based on the ground that the parties constituted a joint hindu family and the family chart was detailed in para 1 of the plaint and it was further averred that the property in question was purchased from the joint family funds. In the suit, apart from petitioners, their relatives and relatives of respondent No.1-plaintiff, Indian Overseas Bank was impleaded as defendant No.7 and State of Haryana was



impleaded as defendant No.8. In the plaint, injunction was sought from restraining the defendants, which included the bank as well as the State, from alienating the suit property by way of sale, mortgage, auction etc. in any manner and also from restraining defendant No.8 i.e., State of Haryana from using coercive methods to recover the loan amount from loan account No.TL-129703351200006. A perusal of the record would show that defendant No.7-bank had filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the jurisdiction of the Civil Court is barred and the said application is pending adjudication. The plaintiff/respondent No.1 had filed an application under Order 6 Rule 17 CPC on the plea that he had learnt from reliable sources on 26.03.2021 that there were two other properties which were also purchased from the joint funds of the family and thus, the plaintiff wanted to include the said properties in the suit.

5. On 05.01.2024, the trial Court had passed the following order:-

“Present: Shri Surin Singla, Advocate for plaintiff.

Sh. Mohan Monga, Advocate for defendants No.1 to 6.

Sh. Charanjiv Singh Pasricha, Advocate for defendant No.7

Sh. Vijay Kaushik, Govt Pleader for defendant No.8.

Cost paid by learned counsel for plaintiff. Reply to application under Order 7 Rule 11 CPC filed. Another application under Section CPC read with order 7 Rule 11 CPC filed by defendant No.7.

Reply to application under Order 6 Rule 17 CPC not filed by defendants. Neither cost paid. Further adjournment



in this regard is not justified. Hence, defendants are forfeited their right to file their reply to the application under Order 6 Rule 17 CPC.

As plaintiff has already moved application under Order 6 Rule 17 for amendment of plaint, said application is liable to be decided prior to application under Order 7 Rule 11 CPC.

Accordingly adjourned to 23.04.2024 for arguments upon application under Order 6 Rule 17 CPC.

Date of Order: 05.01.2024

Sd/-

(Sandeep Chauhan)

ACJ(SD), Panipat,

UID: HR0271”

6. A perusal of the above order would show that the present petitioners who are defendant Nos.1 and 3 had not filed reply to the said application under Order 6 Rule 17 CPC and had also not paid costs which were earlier imposed and thus, had forfeited their right to file reply to the application under Order 6 Rule 17 CPC. The zimni orders prior to the order dated 05.01.2024 have not been annexed with the present petition. At any rate, the fact that cost was imposed and was not paid could not be disputed before this Court. Moreover, the order dated 05.01.2024 has not been challenged at any stage, even in the present petition. Thus, the second argument raised by the learned counsel for the petitioners to the effect that the petitioners should have been granted right to file reply to the application under Order 6 Rule 17 CPC is meritless and deserves to be rejected outrightly. Moreover, the Full Bench of this Court in case titled as **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another**, reported as **1981 PLR 555**, had held that in case, the case was adjourned and costs were



imposed and yet the parties failed to pay the costs on the next date of hearing, then it was mandatory on the Courts to disallow prosecution of suit or defence as the case may be. Thus, the order dated 05.01.2024 was in consonance with the law laid down in the abovesaid judgment.

7. Since, the reply was not filed by the petitioners, the trial Court vide order dated 09.01.2025, after taking into consideration the fact that the case was at the initial stage, inasmuch as, admittedly even the issues have not been framed as of yet and also the fact that nature of the suit would not change, had allowed the amendment. The said order is legal, and deserves to be upheld, inasmuch as, the amendment is necessary for full and proper adjudication of the case. The case as per the plaint is based on the plea that the suit property is joint hindu family property and the said property has been purchased from the joint family funds and even the two properties which have been mentioned in the application for amendment are also stated to have been purchased from the joint family funds and thus, the said amendment would help in finally adjudicating the case between the parties. Moreover, in the present case, it is not in dispute that the trial has not commenced, inasmuch as, the issues have not been framed as of yet and there is nothing to rebut the plea raised by respondent No.1-plaintiff to the effect that he had learnt about the factum of the said two properties having been purchased from the joint family funds on 26.03.2021 i.e., after filing of the suit and thus, the same was a subsequent event. The application thus, cannot be said to have been filed after unexplained delay.

8. 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.

9. After passing of the order dated 09.01.2025, frivolous application was filed by the petitioners for grant of permission to file reply to the said application filed under Order 6 Rule 17 CPC although the said application had already been allowed and thus, the said application for grant of permission to file reply has also been rightly dismissed vide order dated 23.01.2025. It was observed by the trial Court that the reply was not filed by defendant Nos.1 and 3 and on 04.10.2023, final opportunity was given to the petitioners and other defendants to file reply subject to cost of Rs.500/- and on the next date of hearing, neither the cost was paid nor reply had been filed and, therefore, on 05.01.2024, the right to file reply was forfeited. It was observed that there was no ground to recall/review the order dated 05.01.2024.

10. Keeping in view the abovesaid facts and circumstances, the impugned orders are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

05.02.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No