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

CR-2000-2025

Date of decision: 01.04.2025

Jagdish

...Petitioner

Versus

Harish Chander and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Mrigank Sharma, 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 05.03.2025 passed by the Civil Judge (Junior Division), Gohana (Annexure P-10) vide which an application of the petitioner/defendant seeking amendment of the written statement under Order 6 Rule 17 CPC dated 24.01.2025 (Annexure P-8) had been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner in the original written statement on account of inadvertence could not raise the plea of fraud which he wishes to take by moving an application dated 17.01.2025 (Annexure P-8) under Order 6 Rule 17 CPC. It is submitted that the mortgage deed was got signed from the petitioner fraudulently by alleging that the same was a rent deed and the same was procured in order to fabricate the ground for eviction. It is argued that the said amendment is very necessary and thus, deserves to be allowed and the



impugned order vide which the said amendment has been rejected, deserves to be set aside.

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

4. It is not in dispute that the respondents-plaintiffs had filed a suit for possession by way of redemption under Order 34 of CPC. Prayer for mesne profits was also made. It was the case of the respondents-plaintiffs that initially plaintiff No.2 was the owner of the property and that plaintiff No.2 was in need of some money and thus, mortgaged the shop in question to the defendant in return for a mortgage amount of Rs.50,000/- and all the terms and conditions were duly reduced into writing. It was further stated that plaintiff No.2 also delivered the possession of the said shop to the petitioner-defendant and the said mortgage deed was duly registered in the office of S.R., Gohana vide document No.3341 dated 11.03.2002 and was read over and explained to the parties and was duly signed by all the parties concerned. It was further the case of the respondents-plaintiffs that thereafter plaintiff No.2 had transferred the said shop in favour of plaintiff No.1 as per the family settlement vide transfer deed which was also duly registered with the Sub Registrar in April, 2015 and that an amount of Rs.50,000/- had already been tendered by the plaintiffs. On the basis of the said pleas, decree for possession by way of redemption was sought.

5. Written Statement (Annexure P-7) was filed by the petitioner and in para 2 of the written statement, with respect to the plea of there being



a registered mortgage deed, it was stated by the petitioner that same was a matter of record, although, it was further stated that the plaintiffs be put to strict proof with respect to it. Thus, the execution of the registered mortgage deed was not denied. Furthermore, no challenge was laid to the said registered mortgage deed. Primary plea taken in the written statement by the petitioner was to the effect that plaintiff No.2 had no right to transfer the property in favour of plaintiff No.1.

6. The plaintiffs led their evidence on the basis of the said pleadings and even the defendant's evidence was closed by order after availing more than eight effective opportunities, as had been recorded in the impugned order dated 05.03.2025. It is at the stage of rebuttal evidence that the application dated 17.01.2025 seeking amendment was filed in which the plea was raised with respect to there being a fraud having been allegedly played upon the petitioner at the time of execution of the said mortgage deed.

7. Apart from the fact that the said plea was contradictory to the earlier plea and was seeking to withdraw the admission made in para 2 of the written statement, it is apparent that there was no due diligence in filing the said application. The trial had admittedly commenced, as issues have been framed and even evidence of the parties have been completed. 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. The plea raised in the application for not taking the said plea of fraud in the



earlier written statement was that of “inadvertence”. The said plea is in contradiction to the plea of due diligence. Proviso to Order 6 Rule 17 CPC specifically provides that no application for amendment is to be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of trial. In the present case, it could not be disputed that the alleged plea of fraud was available to the petitioner at the time of filing of the original written statement and thus, amendment sought is hit by proviso to Order 6 Rule 17 CPC.

8. The trial Court had thus, rightly dismissed the said application and had further rightly observed that the same if allowed would result in de novo proceedings as the parties have led their evidence on the basis of the pleadings which were there and the case was at the stage of rebuttal evidence. The said order is in accordance with law and deserves to be upheld. This Court is of the view that the present application had been filed only to delay the proceedings as it were the respondents who have filed the suit for possession by way of redemption.

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

01.04.2025

Pawan

Whether speaking/reasoned:-
Whether reportable:-

(VIKAS BAHL)
JUDGE

Yes/No
Yes/No