



CR-2990-2025 (O&M)

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

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CR-2990-2025 (O&M)

Date of Decision:02.07.2025

M/S FANCY SILK STORE AND ANOTHER

... Petitioners

Versus

M/S MANMOHAN SINGH AND COMPANY

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kishan Garg, Advocate for the petitioners.

SUVIR SEHGAL J.**CM-11594-CII-2025**

1. Application is allowed, as prayed for.
2. Application for amendment of the written statement and reply filed thereto are taken on record as Annexures P-7 and P-8, respectively.

Main case.

3. Assailing order dated 27.01.2025, Annexure P-6, passed by learned Civil Judge, Senior Division, SAS Nagar, Mohali, whereby an application filed by petitioners/defendants for amendment of the written statement has been declined, they have approached this Court by way of instant revision petition.
4. Mr. Kishan Garg, counsel for the petitioners submits that the



respondents/plaintiffs filed a suit, Annexure P-1, for recovery of Rs.4,90,498/- along with interest and upon being served, defendants are contesting the suit by filing a written statement, Annexure P-2. He urges that the entire factual position could not be mentioned in the written statement by the previous counsel. He states that it could not be mentioned that business dealings between the plaintiff and M/s Fancy Silk and Sarees, a partnership concern, came to an end in 2016. He states that Mr. Rakesh Kumar Bansal, petitioner/plaintiff No.2 suffered from cerebrovascular accident (CVA) and a dispute arose amongst the family members, which resulted in the filing of the instant suit. He submits that after the change of the counsel, an application, Annexure P-7 was filed for the amendment of the written statement, which has been declined by the trial Court vide impugned order without appreciating the factual background. He contends that the amendment goes into the root of the case and in case it is not permitted, the petitioner shall be seriously prejudiced.

5. I have heard counsel for the petitioners and considered his submissions besides examining the documents appended with the paper book.

6. Plaintiff filed a suit for recovery and upon being served, defendants appeared and filed their written statement on 31.10.2018. Trial Court framed issues on 15.02.2019 on the basis of the pleadings of the parties. Plaintiff led evidence in support of the pleadings and closed his evidence on 08.08.2024. Despite repeated opportunities, defendants



did not produce their evidence and last opportunity was granted to them on 27.11.2024. They filed the application, Annexure P-7, for amendment of the written statement on 05.12.2024, which after contest, has been rejected by the trial Court vide order impugned herein.

7. After the commencement of the trial, amendment to the pleadings cannot be permitted in a casual manner, proviso to Order 6 Rule 17 CPC provides as under:-

“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 the trial.”

8. **In Vidyabai and others Vs. Padmalatha and another (2009) 2 SCC 409**, Hon’ble Supreme Court has held that the proviso is couched in a mandatory terms. Court’s jurisdiction to allow an application for amendment is taken away unless the conditions precedent therefor are satisfied viz that Court must come to the conclusion that inspite of due diligence a party could not have raised the matter before the commencement of the trial. Unless this condition is satisfied, application for amendment cannot be acceded to. In **Basavaraj Versus Indira and others (2024) 3 SCC 705**, Supreme Court has observed that amendment of the pleadings is not a matter of right and burden lies on the party seeking amendment after the commencement of trial to show that despite due diligence, such an amendment could not be sought earlier. The plea of oversight cannot be accepted as a ground to allow any



amendment in the pleadings when all the facts were to the knowledge of the party.

8. Adverting to the facts of the present case, it is evident that the trial had commenced in February 2019 with the framing of the issues and plaintiff concluded its evidence in August, 2024. After grant of last opportunity to conclude their evidence, defendants moved the application Anenexure P-7, for amendment of the written statement. No reason has been given in the application to show that the defendants had exercised due diligence and that they could not move this application earlier. The sole ground taken before this Court is that the counsel engaged by them did not plead the necessary facts in the written statement and counsel was changed. This does not constitute a sufficient ground for allowing the amendment. Defendants have failed to exercise due diligence and have also failed to satisfy this Court that for reasons beyond their control, they could not aver these facts in the written statement filed by him. Moreover, a perusal of the proposed amendment shows that the defendants intend to introduce a totally new case. This would change the nature of the litigation, which is impermissible. There is no illegality or irregularity in the order passed by the trial Court, which does not call for any interference.

9. Petition sans merits and is dismissed with no order as to costs.

02.07.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No