



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129

CR-7221-2024 (O&M)

Date of Decision: 20.02.2025

Jaspal Singh

....Petitioner

Versus

Karora Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. JS Bhinder, Advocate for the petitioner.

NIDHI GUPTA, J.

1. Prayer in the instant revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 13.11.2024 (Annexure P-1), passed by the learned trial Court, in Civil Suit No. 1443 of 2021 titled as 'Karora Singh vs. Jaspal Singh' whereby the application file by the petitioner-defendant under Order VI Rule 17 read with Section 151 CPC for amendment in the written statement filed by the petitioner, was dismissed.

2. Learned counsel for the petitioner, *inter alia*, submits that the impugned order (Annexure P-1) deserves to be set aside as the learned trial Court has failed to appreciate that some facts could not be mentioned in the written statement. As such, the petitioner wants to add para No. 5 in the preliminary objections of the written statement to the effect that the alleged Agreement to Sell dated 12.07.2019 fails due to fault on the part of plaintiff/respondent herein, as, he had failed to get the land redeemed from the Bank; and amendment was also sought in para No. 9 of the written statement on merits. It is submitted that the said facts/amendments



are necessary for the proper adjudication of the matter. It is, accordingly prayed that the impugned order be set aside.

3. No other argument has been raised by learned counsel for the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. Brief facts of the case are that respondent-plaintiff filed a Civil Suit dated NIL (Annexure P-2) for possession by way of specific performance of Agreement to Sell dated 12.07.2019 executed by the petitioner-defendant in favour of the respondent. In the said civil suit, the petitioner had filed written statement dated 03.04.2023. Subsequently, the petitioner filed the present application dated NIL (Annexure P-3) under Order VI Rule 17 CPC read with Section 151 CPC, seeking amendment of his written statement to add para No. 5 in the preliminary objections and to amend para No. 9 of his written statement. The respondent filed reply dated NIL (Annexure P-4) opposing the said application of the petitioner. Vide the impugned order dated 13.11.2024 (Annexure P-1), the application of the petitioner under Order VI Rule 17 CPC, has been dismissed.

6. Order 6 Rule 17 CPC 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.”

7. A bare reading of the proviso to the above-said provision shows that it is very categorically stipulated therein that “...*no application for amendment shall be allowed after the trial is 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.*” Admittedly, the trial has commenced in the present case. The present application under Order 6 Rule 17 CPC for amendment has been filed by the petitioner after conclusion of the plaintiff evidence and at the stage of defendant evidence i.e. much after trial had commenced which, is not permitted as per law. In fact, the present suit (Annexure P-2) is pending for evidence of the defendant-petitioner since 19.10.2023 and the petitioner had taken more than 15 opportunities. Number of opportunities have been granted to the defendant-petitioner to conclude his evidence; including costs were imposed which the petitioner had failed to pay. Instead of concluding his evidence and submitting costs, the petitioner has filed the present application (Annexure P-3). Therefore, it appears that the present application has been filed by the defendant-petitioner only to delay the proceedings.

8. Further, the only situation in which amendment after commencement of trial is envisaged is if ‘*in spite of due diligence, the party could not have raised the matter before commencement of trial.*’ However, in the present case that is not so as. It is the own admitted case of the petitioner that at the time of filing the written statement, certain facts were omitted to be mentioned. The facts now sought to be



incorporated in the written statement are to the effect that: (a) that the alleged agreement to sell fails due to fault on the part of the plaintiff-respondent as he had failed to get the land redeemed from the bank; and (b) that the amendment sought to the effect that the defendant had suffered huge loss of ₹54,00,000/-, so the earnest amount paid by the plaintiff stood forfeited. However, even the application of the petitioner does not mention that he was not aware of the above facts at the time of filing the written statement. It would, therefore, appear that the petitioner was well in the knowledge of the said facts, however, failed to exercise due diligence. In any event, the said facts have no connection to the transaction at hand. Thus, no ground is made out to interfere in the impugned order.

9. In view of the above, the instant revision petition is **dismissed.**

10. Pending application(s), if any, shall also stand disposed of.

20.02.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No