



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
**214**

**CR-535-2023(O&M)**  
**Date of decision: 14.07.2025**

**Mukesh Kumar**

**...Petitioner(s)**

**Vs.**

**Madhu Puri & Another**

**...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Jaskaran Singh, Advocate  
for the petitioner.

Mr. Saket Bhandari, Advocate  
for respondent No.1.

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**NIDHI GUPTA, J.**

Present Revision Petition has been filed by defendant No.2 under Article 227 of the Constitution of India praying for setting aside of the order dated 07.12.2022 (Annexure P1) passed by learned Civil Judge, Junior Division, Karnal in Civil Suit No.1482 of 2016 titled as "Smt. Madhu Puri vs. Shashi Kant & Others" whereby the application filed by the petitioner under Order 6 Rule 17 CPC to amend the written statement, has been dismissed.

2. Mr. Saket Bhandari, Advocate puts in appearance on behalf of plaintiff/respondent No.1 and files Vakalatnama, which is taken on record.

3. Brief facts of the case are that the plaintiff had filed the present suit dated 04.07.2016 (Annexure P3) for preliminary decree of possession by



way of partition of suit property; along with permanent injunction restraining the defendants from alienating the suit property for more than their share; further prayer was made for passing of final decree of possession by way of partition of suit property for separate allotment and possession of 1/3<sup>rd</sup> share. The petitioner/defendant No.2 had filed written statement dated 'Nil' (Annexure P4) to the said suit. Subsequently, the petitioner filed the present application dated 04.01.2019 (Annexure P6) under Order 6 Rule 17 CPC praying for amendment of the written statement. Vide the impugned order, the said application of the petitioner has been dismissed.

4. It is inter alia submitted by learned counsel for the petitioner that the learned trial Court is in patent error in dismissing the application of the petitioner as it failed to appreciate that at the time of filing the present suit, the petitioner was passing through severe financial crisis. Therefore, the petitioner could not engage a lawyer for pursuing the said suit. It is submitted that the petitioner had drafted the said written statement with the assistance of a Typist who failed to disclose the facts regarding the dismissal of the earlier suit filed by the plaintiff; as well as regarding the Will dated 03.02.1995 in the written statement despite the fact that the said facts had been disclosed to him by the petitioner. It is pointed out that as is stated in Para 2(v) of the present petition that: *"The said facts could not be mentioned because of lack of proper drafting of the written statement, lack of proper legal assistance and due to inadvertence."* It is submitted that in view of the



above facts, the application of the petitioner could not have been dismissed as the said amendment is necessary for the proper adjudication of the matter. However, now, the petitioner has engaged a lawyer to contest the Civil Suit. Moreover, it is only at the time of preparing the case for evidence of the petitioner that it was revealed that material facts have not been mentioned in the written statement. Learned counsel submits that the said facts are very necessary for the proper adjudication of the matter, and accordingly prays that the present petition be allowed.

5. Learned counsel appearing on behalf of the plaintiff vehemently opposes the submissions made on behalf of the petitioner and submits that amendment of pleadings is envisaged only on the ground that the said material was not in the knowledge or possession of the applicant at the time of filing the pleading. It is submitted that inadvertence or oversight do not form sufficient ground for permitting amendment. It is the admitted case of the petitioner that proper facts could not be pleaded in the written statement due to oversight and inadvertence; and the same do not constitute sufficient ground. In support of his contentions, learned counsel relies upon judgments of this Court in **Jagjit Singh v. Jasmer Singh, (Punjab And Haryana) : Law Finder Doc ID # 2219201; Surjit Kaur v. Harpinder Kaur (P&H) : Law Finder Doc ID # 2058640; and 'Naresh Kumar & Another Vs. Devinder Singh & Another' CR-455-2025 Pronounced on 01.07.2025.**



6. Learned counsel for the plaintiff further hands over a copy of the zimni orders passed by the learned trial Court to submit that from 17.09.2018 onwards the petitioner has taken as many as 15 adjournments to lead evidence. Learned counsel further points out that trial has commenced and as per the provision, amendment is not permitted after commencement of trial. Ld. counsel accordingly prays for dismissal of the present petition.

7. No other argument is made on behalf of the parties.

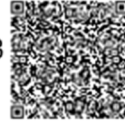
8. I have heard learned counsel for the parties and perused the case file in great detail. I find no merit whatsoever in the submissions made on behalf of the petitioner.

9. Order 6 Rule 17 CPC reads as follows:-

*“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.”*

10. A bare reading of the above provision shows that no doubt, amendment is to be permitted in justiciable terms for the determination of the real controversy at hand. However, the said provision cannot be read in isolation of the proviso thereto, which further categorically stipulates “...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.”* Thus, prior to permitting amendment, it is incumbent upon this Court to veritably conclude that despite exercise of due diligence, the party seeking the amendment could not have pleaded the facts now sought to be incorporated.

11. In the facts of this case, this Court is unable to bring itself to the conclusion required as per law/ stipulated in the proviso. The undisputed facts of the present case in chronological sequence are that the present Civil Suit was filed on dated 04.07.2016 (Annexure P3). As evident from the zimni order dated 12.10.2016 (Annexure P5), written statement was filed in the Court on 12.10.2016. Thereafter, the issues were framed on 06.10.2017 whereafter trial had commenced. Whereas the present application for amendment under Order 6 Rule 17 CPC was filed much thereafter on dated 04.01.2019 (Annexure P-6); wherein it is categorically averred that the relevant facts could not be pleaded in the written statement due to ‘inadvertence’. In fact, the petitioner has come up with the most ingenuous reason that relevant facts were omitted to be mentioned in the written statement as the petitioner had drafted the said written statement with the assistance of a Typist who failed to disclose the facts even though the said facts had been disclosed to him by the petitioner. It is therefore admitted that the said facts were in the knowledge of the petitioner even prior to filing of



the written statement. Yet, the same do not find mention therein only due to oversight. It is therefore crystal clear that the petitioner has execrably failed to exercise due diligence as required under law.

12. It is to be noted that the application for amendment dated 4.1.2019 (Annexure P-6) filed by the petitioner, gives no reasons whatsoever for not mentioning the said facts in the written statement. In fact, the application for amendment shows that there is no plea regarding due diligence. It has been admitted by counsel for the petitioner that the facts of the proposed amendment were not included due to 'oversight'. Needless to say, the above said reasons cited by the petitioner constitute no ground for permitting amendment. As per established tenets of law, inadvertence, oversight, or sheer carelessness as in the present case, constitute no ground for permitting amendment. By way of amendment, the petitioners cannot be permitted to fill the lacunae in their case. Provision of Order 6 Rule 17 CPC is not to fill lacuna in the pleadings.

13. It is undisputed that 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.*' In dealing with cases of such nature, there is necessity to delicately traverse the fine line between strict interpretation of the provision and proper adjudication of the matter and equitable construction of provision. In the present case it cannot be ignored that even though the said facts were in the



knowledge of the petitioner, and are stated to be of utmost importance, yet it has not been mentioned in the written statement merely due to 'oversight'. It is my considered view, that in such a situation, amendment cannot be permitted.

14. Moreover, it cannot be ignored that the present application under Order 6 Rule 17 CPC for amendment has been filed by the petitioner much after trial had commenced – which, in itself is not permitted as per law. Admittedly, plaintiff evidence has concluded and matter has been adjourned many times at the instance of the petitioner to enable him to lead evidence. A perusal of the zimni orders shows that if not 15, the petitioner has availed sufficient number of dates to lead his evidence. Furthermore, permitting the said amendment would change the nature of the suit. Therefore, it would be grossly prejudicial and inequitable to the respondent if amendment is permitted at this belated stage.

15. This Court is well aware of the precedent case law holding that in applications of such nature a liberal view ought to be taken. However, keeping in view the entirety of the above noted facts and circumstances of the case, this Court is not convinced to grant the prayer of the petitioner. I am supported in my view by recent judgment dated 29.2.2024, of the Hon'ble Supreme Court in **Basavaraj v. Indira (SC) : Law Finder Doc Id # 2510571** wherein it is held that: -



*“Amendment of pleadings – Oversight cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial.”*

16. Reference may also be made to another judgment of the Hon’ble Supreme Court in **Pandit Malhari Mahale v. Monika Pandit Mahale, (SC) : Law Finder Doc Id # 1691426** wherein it is held as under: -

*“Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Plaint - Amendment application filed after evidence begun - In absence of any finding that Court is satisfied in spite of due diligence, party could not introduce amendment before commencement of trial - Therefore, amendment of plaint unsustainable and set aside.”*

17. This Court in **Rati Ram v. Inder (P&H) : Law Finder Doc Id # 244372** has held as under:-

*“Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Pleadings - Amendment cannot be allowed as a matter of right -Amendment was not at all necessary to determine the real controversy between the parties - The application was not bona fide as such, it was only filed to delay the proceeding further when the suit remained pending for seven years - Amendment right decline.”*

18. Again in **“K.B. Sharma Vs. Shri Keerti Karan Dharni” (P&H) Law Finder Doc ID # 205192**, this Court has held that: -

*“A. Civil Procedure Code, 1908, Order 6, Rule 17, Proviso - Amendment of written statement - After the commencement of trial, amendment of pleadings cannot be allowed, until and unless, the party seeking amendment establishes that despite due diligence, it could not raise the pleas sought to be incorporated by way of amendment - Where defendant was*



*already in knowledge of such pleas at the time of filing the original written statement - Amendment cannot be allowed."*

19. In view of the above noted, factual and legal position, the present petition is **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

**14.07.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No