

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****131****CR-665-2025 (O&M)****Date of decision: 03.02.2025****Kulwant Kaur****...Petitioner(s)****Vs.****Sanjay Jalota****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. K.K.Goel, Advocate for the petitioner.

*********NIDHI GUPTA, J.**

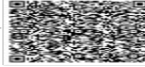
The present civil revision petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India for quashing of order dated 10.12.2024 (Annexure P-7) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amending the plaint, has been dismissed.

2. Brief facts of the case are that the petitioner/plaintiff had filed a suit dated 23.06.2017 (Annexure P-1) seeking a decree for possession of the encroached portion shown in 'Red' of the shop in dispute; with a further prayer for a decree of Mandatory Injunction directing the defendant to demolish the construction of the encroached portion and to remove the malba of the same and handover the vacant possession of the above said encroached portion to the petitioner/plaintiff.



3. In the said suit, during the course of trial, after the conclusion of the plaintiff evidence, the plaintiff filed the present application dated Nil (Annexure P-3) seeking amendment of the plaint. Vide the impugned order dated 10.12.2024 (Annexure P-7), the said application of the petitioner has been dismissed.

4. Ld. Counsel for the petitioner submits that at the time of filing the suit, only ground floor plan was produced with the plaint. However, during her evidence, the petitioner had referred to the site plan (Ex.P2), which was in respect of the entire building including the first floor. It is submitted that in order to to avoid any ambiguity the present amendment was necessary; and it was necessary to refer to the plan (Ex.P2) in head note, prayer clause, and body of the plaint. It is accordingly prayed that the word "Ex.P2" be read alongwith the words "red" at relevant places of the plaint. It is further submitted that the amendment is formal in nature; and will not change the nature of the suit; and no prejudice will be caused to the defendant as the plan had already been proved by Anil Kumar draftsman, who had also been subjected to cross-examination. As such, no further evidence will be required to be led by the petitioner in respect of Ex.P2. It is submitted that it was only inadvertently that the portion of the first floor was not mentioned in the prayer clause at the time of filing the suit. However, as the document (Ex.P2) has been brought in evidence, it was mandatory for the petitioner to amend the prayer.



5. In support, Id. counsel relies upon the judgment passed by the Hon'ble Supreme Court in '**Mahila Ramkali Devi and others vs. Nandram (D) Thr. LRs. and others**', Law Finder Doc Id# 670098; and another judgment passed by a Coordinate Bench of this Court in '**Aadish Aggarwal and another vs. Brijeshwar Swaroop and another**', Law Finder Doc Id# 909954, in which it has been held that in cases of amendment, a liberal view is to be taken. It is accordingly prayed that the impugned order be set aside.

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

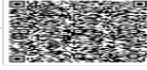
7. Heard learned counsel for the petitioner and perused the case file in great detail.

8. 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."

9. 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, issues in the present case were framed by the learned trial Court on 06.01.2020; whereas the present application under Order 6 Rule 17 CPC (Annexure P2) 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.

10. 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 suit only the plan with respect to ground floor was submitted by her. Subsequently, at the time of leading evidence in examination-in-chief, the plan of complete property (Ex.P2) was filed with affidavit of Jeet Pal, the Attorney Holder of the petitioner. Thereafter, the petitioner had first moved an application for recalling of PW1 Jeet Pal, who had tendered the site plan Ex.P2, and was already examined completely, for further cross-examination. This application was dismissed by learned trial Court on 04.09.2023. Even at that stage, during the evidence of PW1, the petitioner could have easily raised the issue but she failed to do so. It is only at the stage of defendant evidence that the petitioner moved the present application under Order 6 Rule 17 CPC seeking amendment to the plaint. Thus, the facts as now sought to be projected by the petitioner were very much in her knowledge even at the time of filing of



plaint. Yet, the petitioner failed to produce the plan Ex.P2 with the plaint. No reasons have been given as to why the petitioner did not produce the complete site plan with the plaint. Clearly, therefore, the petitioner failed to exercise due diligence. As such, it would be illegal to permit the amendment at this belated stage of trial.

11. Moreover, as also admitted by the petitioner, the site plan Ex.P2 is in respect of the entire building and includes the first floor; whereas the plan produced by the petitioner with the plaint is only in respect of the ground floor. Thus, both the plans are different. Therefore, in case the present amendment is permitted, it will change the nature of the suit. It would appear that the petitioner is trying to fill the lacuna in the suit which cannot be permitted especially at this belated stage.

12. Further, if the amendment is permitted, it will amount to restarting the process of pleadings as the defendant will then seek to file an amended written statement which would further delay the trial. In any event, the learned trial Court in the impugned order has already observed that *“the effect of site plan Ex.P2 will be seen as per law at final stage of the case.....”* As such, no injustice shall be caused to the petitioner.

13. 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. The petitioner can derive no benefit from the relied



upon judgments i.e. ***“Aadish Aggarwal and another’s case (supra) and Mahila Ramkali Devi and others’ case (supra)”*** as the same are distinguishable on facts and law.

14. The present civil revision accordingly, stands **dismissed**.
15. Pending application(s) if any also stand(s) disposed of.

03.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No