

Davinder Singh and Another Vs Gian Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 1, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: J.K. Chauhan, for the Appellant;

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.

Against the decreeing of the suit preferred by respondents No. 1 to 4, two of the defendants, who are the petitioners

herein, filed an appeal. During its pendency, they filed an application under Order 6 Rule 17 CPC for amending their written statement which they

had filed before the trial Court in order to take the plea that all the legal heirs of Bant Singh had not been impleaded as party and therefore, the suit

was bad for non-joinder. This application of the petitioners has been dismissed by the learned District Judge, Panchkula while passing the

impugned order dated 8.9.2012. Learned Counsel for the petitioners has submitted that proviso to Order 6 Rule 17 CPC came into force on

1.7.2002 and as the suit had been filed on 28.2.2002, the said proviso could not be pressed into service so as to reject the application filed by the

petitioners for amendment of their written statement.

2. It is true that the suit was filed on 28.2.2002 and the proviso to Order 6 Rule 17 CPC came into operation on

1.7.2002. However, admittedly,

the written statement was preferred by the petitioners before the trial Court on 1.10.2003 i.e. after coming into the force of the proviso,

forementioned. In such a situation, the application for amendment of the written statement could only be entertained if the Court comes to the

conclusion that inspite of the due diligence, these facts could not be raised before the commencement of the trial. However, the perusal of the

impugned order would reveal that the petitioners had failed to establish that inspite of due diligence they could not raise the matter by seeking

amendment of the written statement before the commencement of the trial.

3. While dismissing the application in question filed by the petitioner, the lower Court also, observed that the plaintiff was the dominos litis and it is

for him to decide as to who has to be impleaded as defendant. The defendant cannot force him to implead another as a party to the suit. However,

at the same time, this Court is of the view that the defendants/petitioners would still have the opportunity of taking all the legal pleas, if available to

them, including the plea of non-joinder of necessary party, at the time of final arguments in the appeal.

4. In view of the above, the revision is without any merit and, accordingly, dismissed. However, it would be open to the defendants/petitioners to

raise all the pleas, if available to them, including the plea of non-joinder of necessary party, at the time of final hearing of the appeal.