

(2013) 07 P&H CK 0491
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3684 of 2013

Bishop P.K. Samanta Rao and Others	APPELLANT
Vs	
Joshil Rai	RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2013) 07 P&H CK 0491

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : V.K. Sandhir, for the Appellant;

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—By filing this revision petition under Article 227 of the Constitution of India, defendants have assailed order dated 27.02.2013 (Annexure P-4), passed by learned trial court, thereby dismissing application (Annexure P-3) moved by the defendants for amendment of written statement. Respondent-plaintiff has filed suit inter alia assailing his removal from membership of Christ Church Cathedral, Amritsar, vide plaint (Annexure P-1). The defendants, by amendment of written statement, want to plead that as per Section 7 of Chapter 5 of Constitution of CNI 2006, the plaintiff had to first avail the remedy provided under the said Constitution before approaching the Civil Court, and therefore, the Civil Court has no jurisdiction to entertain and try the suit.

2. The plaintiff, by filing reply, opposed the aforesaid application for amendment of written statement, moved by the defendants. However, copy of the said reply has not been placed on record of this revision petition by the petitioners.

3. Learned trial court, vide impugned order (Annexure P-4), dismissed the defendants' application (Annexure P-3) for amendment of written statement. Feeling aggrieved, defendants have filed this revision petition.

4. I have heard counsel for the petitioners and perused the case file.

5. Admittedly, application (Annexure P-3) for amendment of written statement was moved after commencement of trial i.e. after framing of issues and recording of part evidence of the plaintiff. Consequently, in view of proviso to Order 6 Rule 17 of the CPC (in short-CPC), application for amendment of written statement has been rightly dismissed by the trial court because according to the said provision, amendment of pleading cannot be allowed after commencement of trial unless the party seeking amendment could not have raised the plea before commencement of trial in spite of exercise of due diligence. In the instant case, there is not even a plea by the defendants in their amendment application (Annexure P-3) that in spite of exercise of due diligence, they could not have raised this plea before commencement of trial. On the contrary, plea taken by the defendants is that due to inadvertence, they could not raise this plea earlier. Thus, in view of proviso to Order 6 Rule 17 CPC, the amendment application has been rightly dismissed by the trial court.

6. Counsel for the petitioners relied on judgment of Hon''ble Supreme Court in the case of Sushil Kumar Jain Vs. Manoj Kumar and Another, . However, it has not been laid down in the said judgment that amendment of written statement can be allowed after commencement of trial, even if the defendants could have raised the plea before commencement of trial after exercise of due diligence. For the reasons aforesaid, I find that the impugned order of the trial court does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition is devoid of merit and is accordingly dismissed in limine.