

(2020) 03 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2965 Of 2020

Lrs Of Kishan Kaur And Ors

APPELLANT

Vs

Mahaveer Singh And Ors

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2020) 03 RAJ CK 0110

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Suniel Purohit

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 10/2/2020 passed by the trial court, whereby, the application filed by the petitioner-defendant under Order VI Rule 17 CPC has been rejected.

It is inter alia indicated in the writ petition that the suit was filed on 26/2/2010 seeking specific performance of the agreement dated 8/7/1983. The suit was resisted by the petitioner by filing written statement on 9/7/2010. Whereafter, during the pendency of the suit, the present application was filed seeking amendment in the written statement. It was inter alia indicated in the application that at the time of filing of written statement certain legal and factual mistakes occurred and certain facts were omitted to be indicated and for the just decision of the case, the amendment is necessary and claimed amendment by adding para 3-A, 3-B and para 22 to 24 in the written statement.

The application was resisted by the plaintiff by filing reply and prayed that the application be rejected.

The trial court after hearing the parties, by its impugned order dated 10/2/2020 (Annex.5) came to the conclusion that only those amendments can be accepted which are necessary for complete adjudication of the dispute and as to how the

amendments would be helpful is not clear and as the suit pertains to specific performance of the agreement, rejected the application.

It is submitted by learned counsel for the petitioner that the trial court was not justified in rejecting the application filed by the petitioner inasmuch as the pleas sought to be raised by way of amendment pertained to material aspects inasmuch as it was the specific case of the petitioner that the document in question was concocted and by way of seeking amendment the petitioner would be fortifying the said aspect, which is based on documentary evidence and, therefore, the rejection of petitioner's application on the grounds indicated in the order is not justified, and therefore, the same deserves to be quashed and set aside.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

Admittedly, the suit is for specific performance of the contract and irrespective of the fact as to what nature of defence has been taken by the defendants, once the amendment is sought in the written statement, the petitioner is required to justify the amendment sought. The only reason indicated in the application is that certain facts were omitted to be indicated and in the written statement certain legal and factual mistakes were committed. Nowhere in the application any indication has been made that the pleas sought to be raised based on the documents and the documents were not available to the petitioner at the time of filing of the written statement.

It is not the case of the petitioner that the document came in possession of the petitioner after filing of the written statement and/or the pleas became available on account of some subsequent development. Once the attempt is to fortify the plea already taken based on the material, which were already available with the petitioner at the time of filing written statement, the filing of the application without any averment explaining the delay in seeking amendment cannot be countenanced.

The trial court in the circumstances of the case was, therefore, justified in rejecting the application filed by the petitioner seeking amendment in the written statement.

Consequently, the writ petition has no substance and the same is, therefore, dismissed.