

(2025:HHC:39999)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.61 of 2022

Date of Decision : 25.11.2025

Anand Kumar Sethi and another

..... Petitioners

Versus

Nishant Thakur and others

.....Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the petitioners : Mr. Vipin Pandit, Advocate.

For the respondents : Mr. Ashwani Kaundal, Advocate, for respondents No.1 to 8.

Mr. Kunal Thakur, Advocate, for respondent No.9.

Bipin Chander Negi, Judge (oral)

The present petition has been preferred against the impugned order dated 26.11.2021, passed by learned Senior Civil Judge, Solan, in Civil Suit No.161/1 of 2010, titled Jagdish Chander vs. Anand Kumar Sethi and others, whereby an application filed under Order 6 Rule 17 of the Civil Procedure Code by the present petitioners/defendants seeking amendment in the written statement filed has been disallowed.

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2. Heard learned counsel for the parties, perused the impugned order and the documents appended along-with the present petition.

3. Admittedly, in the case at hand, suit was filed in the year, 2010. Based on the pleadings of the parties, issues in the case at hand initially were framed on 22.08.2012. Subsequent thereto, an application for amendment of the suit was filed by the present respondents/plaintiffs, which was allowed on 18.07.2013, on account of no objection made by the present petitioners/defendants. On the basis of the amended pleadings, two additional issues were framed on 23.09.2014. Thereafter, evidence was led by the respondents/plaintiffs and the same was concluded on 12.12.2024. The matter was then fixed for the petitioners/defendants' evidence. It is on 03.08.2015 that an application under Order 6 Rule 17 of the Civil Procedure Code for amendment of the written statement was filed by the present petitioners. Reply thereto was filed. The Trial Court, based on the pleadings, had dismissed the application so filed under Order 6 Rule 17 of the Civil Procedure Code seeking amendment of the written statement on two counts.

4. First and foremost, the Trial Court was of the view that in terms of proviso to Order 6 Rule 17 of the Civil Procedure Code in the application filed seeking amendment, the petitioners/defendants had not stated anything as to why the application for amendment could not

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have been filed prior to commencement of the trial despite due diligence. Other than the aforesaid, the Trial Court was of the view that with respect to the plea which is now sought to be raised in the written statement, the petitioners/defendants were at liberty to rebut the evidence led by the respondents/plaintiffs, in the case at hand.

5. From a perusal of the pleadings, specifically the written statement filed by the petitioners/defendants, it is evident that one plea which is being raised by the petitioners/defendants in their written statement is that in pursuance to an agreement dated 08.12.2005, the respondents/plaintiffs had received earnest money of Rs.25,000/- from petitioner No.2/defendant No.2 initially and subsequently had received the remaining amount of Rs.25,000/-. During the evidence of the respondents/plaintiffs, the General Power of Attorney of the respondents/plaintiffs, one Jaspal Singh had stated that Jagdish Chander, the predecessor-in-interest of the respondents/plaintiffs had received a sum of Rs.10,000/- as earnest money and not Rs.25,000/-. It is on this count that amendment in the written statement is sought by the present petitioners/defendants.

6. In the aforesaid backdrop, the Trial Court has correctly stated that petitioners/defendants are at liberty to rebut the respondents/plaintiffs' evidence rather than amending their pleadings. I see no reason to interfere with the view so taken.

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7. Other than the aforesaid, in the application filed seeking amendment to the written statement, the Trial Court has correctly observed that proviso to Order 6 Rule 17 of the Civil Procedure Code has completely been glossed over, as nothing is stated in the application, as to why the amendment could not have been filed prior to the commencement of the trial despite due diligence. In this regard also, I see no reason to interfere in the findings so returned by the Trial Court.

8. In view of above, present is dismissed being devoid of any merit. The pending miscellaneous application(s), if any, shall also stand disposed of.

9. The parties are directed to appear before the Trial Court on **15.12.2025**.

November 25, 2025 (KS)

(Bipin Chander Negi)
Judge