

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

121-2

**Civil Revision No.1385 of 2015
Date of Decision:06.10.2015**

Pink City Heights Pvt.Ltd.

....petitioner

Versus

Thakar Das and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Sanjay Vij, Advocate
for the petitioner

Mr.Sanjay Verma, Advocate
for the respondents

ARUN PALLI, J.(ORAL):-

Vide order being assailed, dated 10.02.2015, rendered by Civil Judge (Senior Division), Kaithal, application moved by the petitioner-plaintiff for framing certain additional issues has since been dismissed. The conclusions that have been recorded in this regard read as thus:

“6. Above titled suit has been filed by the plaintiff against defendants for possession by way of specific performance of agreement to sell dated 31.05.2006. In the written statement defendants have admitted the execution of agreement to sell dated 31.05.2006 but they alleged that plaintiff Pink City Heights Private

Limited itself was not ready to perform its part of contract as the plaintiff has no money to get the sale deed completed. After completion of pleadings of the parties issues were framed vide order dated 17.12.2010. Thereafter, both the parties concluded their evidence and case was fixed for rebuttal evidence, if any and arguments. Now, the plaintiff-applicant has filed the present application for framing of additional issues as mentioned in para No.2(a) to 2(d) of the application. It is also stated by the learned counsel for the plaintiff that plaintiff has already led its evidence and plaintiff does not want to lead any further evidence on these issues. However, perusal of these issues No.2(a) to 2(c) show that these issues are duly covered by the issue No.1 already framed vide order dated 17.12.2010 which runs as under:

1. Whether the plaintiff is entitled to a decree for possession by way of specific performance as prayed for?OPP

For deciding issue No.1 all the pleas taken by the plaintiff as well as defendants regarding the No Objection Certificate shall be dealt with and parties have also led the evidence keeping in view the pleas taken by them and non framing of additional issue on the plea of No Objection Certificate shall not effect the merits of the case and shall not prejudice any of the party.

7. As far as issue No.2(d) is concerned, onus is always upon the plaintiff to prove his

readiness and willingness to perform his/her/its part of contract and therefore, said issue also covered under issue No.1."

The issues that were proposed to be framed are:

"2(a) Whether the execution of sale deed was barred by any Government Authority?OPP

2(b) Whether the No Objection Certificate was to be obtained before the registration of sale deed or not?OPP

2(c) Whether if the defendant was responsible or had authority to obtain the No Objection Certificate?OPP

2(d) Whether the defendant was ready and willing to perform his part of agreement?OPD"

Concededly, the pleas as regards which the plaintiff prays for framing the additional issues are duly set out in the plaint. So much so, even the necessary evidence in this regard has already been led by the plaintiff. The issue that had already been framed by the trial Court on 17.12.2010 reads as thus:

"Whether the plaintiff is entitled to a decree for possession by way of specific performance as prayed for? OPP"

Therefore, all the pleas, as a consequence whereof, additional issues are sought to be framed, could always be and shall be examined by the trial Court, in the wake of an evidence already on record, while deciding issue No.1. In fact, that is even so observed in the order that has been assailed. Therefore, plaintiff shall suffer no prejudice merely on account of non framing of the proposed issues.

As regards proposed issue No.2 (d), it was rightly concluded by the trial Court that onus to prove that the plaintiff has always been ready and willing to perform the contract is upon the plaintiff itself. And even this aspect was well covered within issue No.1, itself. Even otherwise, as indicated above, the issues were originally framed on 17.12.2010. Concededly, parties to the lis have already led and concluded their respective evidence. Application in question was moved by the plaintiff when the matter was listed for arguments.

That being so, no interference, in exercise of revisional jurisdiction under Article 227 of the Constitution of India is warranted. The petition being devoid of merit is accordingly dismissed.

06.10.2015
neenu

(ARUN PALLI)
JUDGE