

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

CR No. 3529 of 2012 (O&M)

Date of decision: 7.12.2015

Arvind Kumar Sachdev and another

.....Petitioners

versus

Ajay Chaturvedi and others

.....Respondents

Coram: Hon'ble Mr. Justice Amit Rawal

Present: Mr. Shireesh Gupta, Advocate for the petitioners.

Mr.Amit Jain, Advocate for respondent Nos.1 and2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.(Oral)

This revision petition is against the order dated 15.3.2012 whereby application filed at the instance of respondent-plaintiff seeking amendment of the plaint converting the suit for mandatory injunction into relief of specific performance, has been allowed.

Learned counsel appearing on behalf of the petitioners submits that amendment sought by the respondent-plaintiff was highly belated but the suit is also liable to be dismissed as per the provisions of Order 2 Rule 2 CPC inasmuch as agreement to sell is dated 3.1.2006 and stipulated date was 28.2.2006 whereas suit for mandatory injunction has been filed in March 2006. Application seeking amendment of the plaint by converting the

suit from mandatory injunction to specific performance of the agreement was filed on 18.9.2010 beyond three years but amendment sought is beyond law of limitation. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court in ***Van Vibhag Kramchari Griha Nirman Sahkari Sanstha Maryadit (regd.) Vs. Ramesh Chander and others 2011 AIR (SC) 41.***

Mr.Amit Jain, learned counsel appearing on behalf of respondent-plaintiff submit that there is no illegality or perversity in the order allowing the amendment otherwise amendment is allowed it relate back to the filing of the suit. The petitioner can press the framing of issue of limitation as it is a mixed question of fact and law.

I have heard learned counsel for the parties and appraised the paper book.

It is settled law where there is breach of the agreement before stipulated date for the execution and registration of the sale deed, the vendor is entitled to invoke the jurisdiction of the Civil court by seeking injunction. After expiry of the stipulated date or breach can seek the specific performance. Since the respondent-plaintiff invoked the jurisdiction of the civil court under Section 9 of the Code of Civil Procedure by filing suit for mandatory injunction in March 2006, breach was already there and was not prevented to seek specific performance. However, the plaintiff did not avail remedy of specific performance. In my view, even the plaintiff had also given up the right to claim specific performance by filing suit for mandatory injunction. The amendment application has been moved beyond period of three years, therefore, as per Article 54 of the Limitation Act, specific

performance of the agreement to sell can be sought only within three years of the stipulated time where time is essence.

The trial Court while allowing the application has remained oblivious of the aforementioned proposition of law as the controversy of Mr.Gupta squarely falls within the ratio descendi in view of law laid down in *Van Vibhag Kramchari Griha Nirman Sahkari Sanstha Maryadit (regd.)'s case (supra)*. In the present case, stipulated date was 28.2.2006 and application for amendment of the plaint has been moved on 18.9.2010 which is beyond three years. Accordingly, the impugned order is set aside. Application on behalf of the respondent-plaintiff seeking amendment of the plaint is hereby rejected.

Revision petition stands allowed.

7.12.2015
Meenu

(AMIT RAWAL)
JUDGE