

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

C.R. No. 470 of 2015

Date of decision: 21.01.2015

Prem Singh Walia

....Petitioner(s)

Versus

Subhash Kumar and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ajay Pal Singh, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed by defendant no. 1-petitioner under Article 227 of the Constitution of India is to the order dated 17.11.2014 (Annexure P-5) whereby, the application for recalling of the order dated 04.02.2013 has been dismissed by the Civil Judge (Sr. Divn.), Sangrur. Vide the said order, the trial Court had allowed the application under Order 6 Rule 17 CPC of the plaintiff converting the suit for permanent injunction into suit for specific performance on the strength of the consent given by the counsel for defendant no. 3-Improvement Trust. The consent of the other two defendants who were contesting was not taken in spite of the fact that they had filed the replies to the application for amendment.

A perusal of the zimini orders would go on to show that the case was thereafter also fixed for filing of the amended written statement on 24.07.2013 and a direction was also issued to the plaintiff to make good the deficient Court fees in view of the amendment and thereafter the Court fees was made good on 26.08.2013. The case was kept for addressing arguments

on the application under Order 6 Rule 17 CPC on account of the fact that defendant no. 3 had only suffered a statement whereas others were contesting. On 05.03.2014, the present petitioner submitted that he wanted to move an application for recalling of the earlier order since he was aggrieved against the allowing of the application at his back for amendment of the plaint. Thereafter, the application was filed which was duly contested. The application has now been dismissed, as noticed, by the trial Court. The reasonings which have been given dealt with both issues regarding the delay in filing the application for recalling the order and also that the amendment, when it was allowed, was at an early stage and the issues were not framed. No evidence had been led and ad valorem Court fees had been filed which was quite exorbitant. The interest of the plaintiff would be prejudiced and the defendant could always be given full opportunity to contest the case. Accordingly, the application for recalling was dismissed.

Counsel for the petitioner has vehemently argued that he was never given an opportunity to contest the application under Order 6 Rule 17 CPC but order was passed with the consent of defendant no. 3 and accordingly prays that an opportunity should be granted.

After hearing counsel for the petitioner, this Court is of the opinion that vide the impugned order, the Court has noticed the stage of the proceedings and also decided on the right as to whether the amendment is to be allowed in the facts and circumstances of the case. As noticed, the suit was initially for permanent injunction and thereafter converted into suit for specific performance. There is no denial that there is an agreement inter se the parties. The issue is whether the plaintiff was ready and willing which

is a matter which will be adjudicated upon by the trial Court on merits. It is settled principle that filing of suit for permanent injunction would not debar the plaintiff from filing a fresh suit for specific performance. Even otherwise, in the reply filed by the present petitioner-defendant no. 1, it was also admitted that the plaintiff has a right to file a new suit for possession of the plot in dispute after the transfer of the plot in favour of defendant no. 2 as a separate cause of action had arisen. It could not be pointed out that by virtue of the amendment any vested right had been taken away and the suit was barred by limitation. The amendment will only serve the interest of justice as unnecessarily filing of a second suit would be avoided.

Accordingly, this Court is of the opinion that the trial Court has correctly rejected the application since admittedly, even the Court fees had also been paid in the suit in pursuance of the earlier order.

In such circumstances, no interference is warranted and the present revision petition is accordingly dismissed.

21.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE