

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7064 of 2014
Date of Decision: 21.4.2015.

Joginder Pal @ Joginder Pal Sharma

.....Petitioner

Versus

Yudhvir Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kuldeep Tiwari, Advocate
for the petitioner.

Mr. Mange Ram Sharma, Advocate
for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 3.9.2014 (Annexure P-7) whereby application moved by the respondent-plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short), was allowed.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

Order 6 Rule 17 CPC reads as under:-

Amendment of pleadings:- *"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such " terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real*

questions in controversy between the parties.”

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Thus, as per the above provision, the Court has ample power to allow amendment of the pleadings as may be necessary for the purpose of determining the question in controversy between the parties. However, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before commencement of the trial.

In the present case, the plaintiff-respondent had filed suit for mandatory injunction basing reliance on agreement to sell dated 28.4.2007. The Trial Court directed the plaintiff to affix appropriate Court fee as virtually the plaintiff had sought the relief of specific performance of agreement to sell in question. Thereafter, plaintiff affixed the necessary Court fee and sought permission to amend the plaint and sought relief of possession by way of specific performance of agreement to sell in question. Although, the amendment in the plaint was sought by the plaintiff after the trial had commenced but the amendment sought by the plaintiff would not change the nature of the suit.

While passing the impugned order dated 3.9.2014 (Annexure P-7), the Trial Court has held as under:-

“7. After having given a thoughtful consideration over the rival submissions made by both parties, it is

considered view of this court that when the plaintiff had filed his suit on 8.12.2011 then he had sought mandatory injunction directing the defendant to execute the sale deed in his favour in compliance of agreement to sell dated 28.4.2007, but when the defendant filed his written statement then he had taken a specific objection that the suit was not maintainable in the present form and even the learned predecessor of this court vide his order dt. 13.5.2013 had observed that:-

'On perusal of file it shows that plaintiff has in fact sought specific performance of agreement to sell in the form of mandatory injunction. As such, he is directed to affix appropriate court fees by the next date of hearing i.e. 1.7.2013.'

Meaning thereby that the court itself had presumed the suit virtually a suit for specific performance of agreement to sell that is why the plaintiff was directed to affix the advalorem court fee and the advalorem fee was fixed by the plaintiff on 1.8.2013, therefore, if the proposed amendment is allowed then no prejudice would be caused to the defendant because the nature of suit shall not be changed in any manner, however, so far as the question of time barred relief is concerned. It is considered view of this court that an issue on the point of limitation has already been framed, therefore, under that issue it would be decided whether the proposed amendment is time barred or not, but at this stage, there

is no apparent reason for dismissing the application. Consequently, the application of the applicant/plaintiff for amendment in plaint under Order 6 Rule 17 CPC read with Section 151 CPC is allowed subject to payment a cost of Rs. 1,000/- to be paid to defendant. Amended title has already been filed which is placed on record file. Now, to come up on 17.9.2014 for filing amended written statement on behalf of defendant, if any.”

Thus, a perusal of above observations made by the Trial Court, reveal that the interest of defendant has also been duly protected. So far as the point of limitation is concerned, the Trial Court has held that the said aspect would be decided after the parties lead their evidence. Thus, the defendant will not suffer any prejudice on account of amendment of the plaint sought by the plaintiff. Plaintiff has already affixed the necessary Court fee as directed by the Trial Court and in these circumstances, it was just and expedient to allow the plaintiff to seek the relief of possession by way of specific performance of agreement to sell in question.

Since the impugned order passed by the Trial Court is just and fair, no ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

April 21, 2015
Gurpreet