

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7380 of 2013
Date of Decision: 14.5.2015.**

Sanjay Kumar

.....Petitioner

Versus

Firey Chand

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Gurminder Singh, Advocate
for the petitioner.

None for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 21.11.2013 (Annexure P-1) whereby application moved by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the plaint, was dismissed.

Learned senior counsel for the petitioner has submitted that issues were framed on 5.10.2012 by the Trial Court. Thereafter, petitioner is yet to lead his evidence. Learned senior counsel has further submitted that the petitioner has filed suit for specific performance of agreement to sell in question. In fact, petitioner had taken the plea that ₹ 1,00,000/- had been paid to the respondent by way of cheque towards the earnest money. In this regard, petitioner wants to explain that the initial cheque

issued by the petitioner, was not encashed by the respondent due to cuttings and, thereafter, another cheque in the sum of ₹ 1,00,000/- was issued by the petitioner in favour of the respondent and the same was encashed by the respondent.

None has appeared on behalf of the respondent.

Petitioner has filed suit for specific performance of agreement to sell dated 19.1.2011. The case of the petitioner is that at the time of execution of the agreement to sell in question, ₹ 10,00,000/- had been paid by the petitioner to the respondent towards earnest money. ₹ 9,00,000/- had been paid in cash to the respondent by the petitioner and the remaining amount of ₹ 1,00,000/- had been paid by cheque. Thus, petitioner had already pleaded that ₹ 1,00,000/- had been paid by him to the respondent by way of cheque. Now by way of amendment, petitioner only wants to explain that the first cheque dated 19.1.2011 was not encashed by the respondent as there were cuttings on the said cheque. Petitioner in lieu of cheque dated 19.1.2011, had issued another cheque dated 3.2.2011 in the sum of ₹ 1,00,000/- in favour of the respondent and the same had been duly encashed by the respondent. Thus, the amendment of the plaint sought by the petitioner, would not change the nature of the suit but can be said to be merely explanatory in nature. The learned Trial Court fell in error while dismissing the application moved by the petitioner-plaintiff for permission to amend the plaint. Petitioner-plaintiff has so far not led any evidence in support of his case.

Accordingly, this petition is allowed. Impugned order dated 21.11.2013 (Annexure P-1) is set aside. Consequently, the

application moved by the petitioner under Order 6 Rule 17 CPC for permission to amend the plaint, is allowed.

**(SABINA)
JUDGE**

May 14, 2015
Gurpreet