

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 7718 of 2015 (O&M)
Date of decision: November 26, 2015.

M/s N.R. Buildcon Pvt. Ltd.

... Petitioner

Vs.

Parma Nand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vineet Sehgal, Advocate
for the petitioner.

Mr. Manish Soni, Advocate
for the respondents.

Surinder Gupta, J

Heard.

2. This revision petition is against the order dated 08.10.2015 passed by Civil Judge (Jr. Division), Gurgaon whereby the application filed by plaintiff-petitioner to frame proper issues was declined.

3. Plaintiff filed suit seeking relief of specific performance of agreement to sell dated 03.04.2006. During the pendency of suit, he moved application for framing of proper issues. Issues no.1 and 2 framed by the trial court are as follows :-

1. *Whether the defendant has entered into agreement in sale dated 3.4.2006 wilth the plaintiff regarding suit land?OPP*
2. *If issue no.1 is decided in affirmative, as to what effect?OPP*

4. The plaintiff sought the re-casting of these issues as follows :-

1. *Whether the plaintiff was always ready and willing and is still ready and willing to get the sale deed executed*

and registered in its favour as per the terms and conditions of the agreement to sell dated 3.4.2006?OPP

2. If issue no.1 is proved, whether the plaintiff is entitled to the relief of specific performance?OPP

5. The application of the plaintiff was, however, declined.

6. I have heard learned counsel for parties.

7. The most material issue in a case seeking relief of specific performance of agreement is “as to whether the plaintiff has always been ready and willing to perform his part of the contract?” However, this issue was omitted while framing the issues on 19.11.2008. The plaintiff has sought framing of this issue to prove that he was always ready and willing to perform his part of the contract.

8. Learned counsel for respondent no.1 Parma Nand has argued that in view of the pleadings, even if this issue is not framed, the court can record finding on readiness and willingness of plaintiff to perform his part of contract.

9 The above contention of learned counsel for respondent has no merits. The issue sought to be framed is a very material issue. There is no reason as to why the same should not be framed and the apprehension of learned counsel for respondent that under the garb of seeking framing of proper issues, the plaintiff wants to fill up the lacuna by leading additional evidence, is mis-founded. The reasons given by the trial court while declining to frame proper issues that the plaintiff should have approached the court earlier are not tenable. The onus is on the court to frame proper issues and give opportunity to the parties to lead evidence in proof of their case.

10. Consequently, this revision petition is allowed. The Lower

Court will frame issue with regard to readiness and willingness of the plaintiff to perform his part of the agreement to sell, in addition to the issues already framed. After framing additional issue, one effective opportunity will be allowed to plaintiff to lead evidence and also to the defendants to rebut the evidence adduced by the plaintiff on the additional issue

11. Notice to other respondents has not been issued in order to avoid the unnecessary delay and expenses. However, if any of the respondent is feeling aggrieved against the above order, he may file an application before the Registry which on filing will be listed for hearing.

November 26, 2015

deepak

(Surinder Gupta)
Judge