

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

CR No.7995 of 2015 (O&M)

Date of decision : 28.11.2015

Mr. Rajendra Kumar Daga and ors.

...Petitioners

Versus

Shivraj Consultants and Advisors Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Alok Kumar Jain, Advocate with
Mr. Kirti Kumar, Advocate for the petitioners.

AMIT RAWAL, J. (Oral)

The petitioners-defendants are aggrieved of the impugned order, whereby the application moved by the respondent-plaintiff seeking the amendment of the plaint by incorporating the relief of declaration challenging the cancellation notice of the agreement to sell dated 24.12.2009, has been allowed.

Mr. Alok Kumar Jain, learned counsel appearing on behalf of petitioners-defendants submits, that trial Court has committed illegality and perversity in allowing the amendment by not taking into consideration the provision of Article 58 of the Indian Limitation Act, 1963, inasmuch as that

in order to claim the relief of declaration, limitation is three years, whereas the cancellation was obtained on 10.04.2010 and the suit was filed on 09.06.2010 whereas the application for seeking amendment, has been filed on 20.12.2014.

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

On going through the averments made in the plaint, there is a reference to the alleged cancellation. The same reads thus:-

“That the said letter of defendants dated 10.04.2010 informing the cancellation of agreement was duly replied by the plaintiff vide Registered A.D. Post dated 15.04.2010 through Shri Pankaj Bhatnagar, Advocate, Gurgaon whereby submitting again that the plaintiff is ready and willing to perform his part of contract and defendants cannot arbitrarily cancel the agreement but of no avail.”

It is now essential requirement of law that in suit claiming specific performance of the agreement to sell, in case during the interregnum or preceding to the filing of the suit, there is a cancellation of the agreement to sell, the plaintiff is required to challenge the same in accordance with law. It is in these circumstances, the application was moved.

The contention of Mr. Alok Kumar Jain, Advocate that the amendment vis-a-vis the cancellation of the documents is hit by Article 58 of the Limitation Act has no force, for the reason that in case any opportunity of evidence is being taken/sought by the respondent-plaintiff, the petitioners-defendants would be also given an opportunity to rebut the

same and shall be at liberty to raise the objection vis-a-vis maintainability under Article 58 of the Limitation Act at the time of the final arguments.

With the aforementioned observations, I do not intend to differ with the findings rendered by the trial Court.

Accordingly, the revision petition is dismissed.

28.11.2015

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**(AMIT RAWAL)
JUDGE**