

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3498 of 2013(O&M)
Date of Decision: 9.2.2016

Jarnail Singh

---Petitioner

versus

Kesar Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner
Mr. S.S.Salar, Advocate for the respondent

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

Rekha Mittal, J.

The present petition has been directed against order dated 15.5.2013 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Dhuri dismissing the application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure (for short "CPC") for amendment of the plaint.

The petitioner filed a suit for possession by way of specific performance of the agreement to sell dated 14.6.2010 purported to be executed by the respondent in respect of land measuring 40 bighas 14 biswas 9 biswas, detailed in the head note of the plaint, on payment of Rs.1,41,20,000/- after adjusting the amount of Rs. 20,00,000/- paid as

earnest money on 14.6.2010. Before the parties could complete their pleadings, the instant application was filed by the petitioner in order to correct the outstanding balance amount from Rs. 1,41,20,000/- to Rs. 1,03,80,400/- in heading (A), para No. 5 and prayer clause of the plaint but the same has been dismissed by the trial court with the following observations:-

“The plaintiff had given a specified amount both in the head note of the plaint as well as in the body of the plaint a couple of times. Comparing both the figures one thing is clear that there is absolutely no resemblance between the two figures. The instant amendment not only cause prejudice to the defendant but is on the face of it mala fide as it cannot be believed that the error occurred due to typographical error by any stretch of imagination.”

Counsel for the petitioner would contend that the petitioner sought to amend the plaint in order to incorporate the correct figure qua the outstanding balance keeping in view the area of land and the rate at which the land in question was agreed to be sold by the respondent. It is further argued that as the proposed amendment is necessary to bring it in consonance with the terms and conditions of the agreement of sale, there is no question of any prejudice being caused to the respondent in case, the proposed amendment is allowed.

Counsel for respondent No. 1, on the contrary, has supported the order passed by the trial court with the submission that plea of the petitioner that the error is typographical is bereft of substance as the figures

already mentioned in the plaint and sought to be substituted do not communicate that it was a typographical mistake.

I have heard counsel for the parties, perused the records and find that the petition is meritorious and deserves to be accepted.

Be that as it may, even if the mistake in regard to describing the outstanding amount is not the result of a typographical error but is that of mistake in calculating the balance amount in terms of recitals in the agreement in dispute, there is no question of any prejudice to the respondent in case the proposed amendment is allowed. Even otherwise, if the petitioner had not made amendment in the plaint, the outstanding liability could be calculated by the Court taking into consideration the terms and conditions of the agreement. In this view of the matter, I am of the considered opinion that the learned trial court committed a grave error in dismissing the application, without correctly and properly appreciating the scope of amendment. On the contrary, had the mistake been allowed to be rectified by the trial court, it could save the parties of inconvenience and expenses they have incurred in pursuing the present petition.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the application filed by the petitioner for amendment of the plaint is allowed. After filing the amended plaint, the trial court would proceed with the case, in accordance with law.

(Rekha Mittal)
Judge

9.2.2016

PARAMJIT