

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

Civil Revision No.4913 of 2016

Date of decision : 03.08.2016

Tejwati

.....Petitioner

Versus

Virender Kaushik

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Aditya Jain, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 12.07.2016 passed by the learned Civil Judge (Senior Division), Faridabad, whereby the application for amendment of plaint has been allowed. The respondent-plaintiff has sought the amendment of the plaint to add a plea in the plaint to challenge the legal notice dated 14.08.2008 issued by the petitioner-defendant through her counsel whereby she allegedly cancelled the agreement and forfeited the earnest money.

2. Learned counsel for the petitioner contended that the application was moved by the respondent-plaintiff at highly belated stage. He did not produce the evidence in spite of numerous opportunities. Even last opportunity was granted and then he moved this application. He further contended that the suit of the plaintiff was also barred under Order 2 Rule 2 of Code of Civil Procedure, 1908 as earlier he has filed a suit for injunction. Thus, he contended that the learned trial Court has wrongly allowed the application.

3. I have duly considered the aforesaid contentions.
4. The only amendment sought by the respondent-plaintiff in the plaint is to challenge the legal notice dated 14.08.2008 whereby petitioner-defendant is claiming to have cancelled the agreement and forfeited the earnest money. The said application has been moved by the plaintiff as in case *I.S. Sikander Vs. K. Subramani 2014(1) RCR (Civil) 236*, the Hon'ble Apex Court has laid down the ratio of law that where a legal notice is issued by the defendant for cancellation of agreement and forfeiture of earnest money, the said legal notice is required to be challenged in a suit filed for specific performance of agreement to sell. The application for amendment of plaint has been moved after the publication of the aforesaid judgment of the Hon'ble Apex Court. Thus, it cannot be stated that the application is belated.
5. Moreover, the proposed amendment is not going to change the nature of the case. The said amendment is also essential for the purpose of determining the real question in controversy between the parties.
6. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order calling for any interference by this Court.
7. Thus, the present revision petition being devoid of merits is hereby dismissed.

03.08.2016*sunil yadav***(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No