

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

**Civil Revision No.5047 of 2012 (O&M)
Date of decision: 10.03.2016**

Azadbir and another

.....Petitioners

Versus

M/s Shalimar Town Planners

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kunal Dawar, Advocate,
for the petitioners.

Mr. B.S. Khehar, Advocate,
for Mr. Hemant Saini, Advocate,
for the respondent.

Ritu Bahri, J.

Challenge in this petition is to the order dated 24.07.2012 (Annexure P1) passed by the Civil Judge (Junior Division), Faridabad, whereby application filed by the plaintiff-respondent under Order 6 Rule 17 CPC seeking amendment of plaint has been allowed.

M/s Shalimar Town Planners-plaintiff (respondent herein) filed a suit against the defendants-petitioners on 25.03.2007, alleging that the defendants had entered into an agreement to sell with regard to the suit property measuring 8 Kanals situated in the revenue estate of village Bhatola, for a total sale consideration of Rs.1,10,00,000/-. The defendants-petitioners had received a sum of Rs.14,10,000/- as advance in cash.

Thereafter, defendant No.2 received further payment of Rs.13,00,000/-

through a cheque drawn at Citi Bank. After receiving Rs.27,10,000/- as advance, the agreement and receipt were executed by the defendants in favour of plaintiff-respondent. The date of registration of sale deed was tentatively fixed as six months, subject to sanctioning of mutation after getting the suit land partitioned amongst its co-sharers. However, the defendants made attempts to wriggle out from the agreement dated 25.03.2007 by alienating the suit land to some other builder of the area. Upon notice, defendants-petitioners filed written statement on 25.03.2009 stating that the agreement stood cancelled and the earnest money stood forfeited.

Since the defendants-petitioners had taken a specific plea that the agreement stood cancelled and the earnest money stood forfeited, the plaintiff-respondent filed an application under Order 6 Rule 17 CPC (Annexure P-5) seeking amendment of plaint by treating it as "Suit for possession by way of specific performance with consequential relief of permanent injunction.". Vide aforesaid application para Nos.7, 8, 9, 11 and 13 of the plaint were sought to be amended by inserting new paras to the following extent:-

"7. That plaintiff earlier filed suit for permanent mandatory injunction as defendants were bent upon to alienate the suit property in favour of third person without getting its partition amongst its co-sharers and bent upon to wriggle out from the binding nature of terms and conditions of agreement to sell dated 25.03.2007. The defendants submitted their written statement in the said suit and submitted that agreement in question has stood cancelled and advance money of Rs.27,10,000/- has been forfeited. In view of above submissions, plaintiff has no other efficacious remedy except to file suit for possession by way of specific performance of agreement."

In Para No.8 of the plaint, 6th line may be deleted and after words suit,

following line may be allowed to be inserted:

“for possession by way of specific performance of agreement and as a consequential relief of permanent injunction against them.”

In Para No.9 of the plait, line after competent Court, following line may be allowed to be inserted:

“Cause of action further accrued on 25.03.2009 when defendants submitted written statement and submitted that agreement stood cancelled and earnest money stands forfeited, since then it has been recurring and finally on 07.04.2010 when plaintiff asked defendants to execute sale deed in favour of plaintiff after receiving balance sale consideration and they finally refused on 07.04.2010. Hence, 07.04.2010 is the final date of cause of action which necessitated the institution of the suit.”

Para No.11 of the plaint be deleted and it should be read as under:

“That value of the suit for the purpose of Court fees and jurisdiction is Rs.1,10,00,000/- on which fixed Court fee of Rs.3,81,300/- has been affixed on the plaint.”

Para No.13 of the laint may be omitted and following new para may kindly be allowed to be inserted:

13. It is, therefore, prayed that:

- (i) That a decree for possession by way of specific performance of the agreement may kindly be passed in favour of the plaintiff against the defendants in respect of 8 Kanals land as mentioned in para Para-2 of plaint on payment of balance sale consideration of Rs.82,90,000/;
- (ii) That if defendants filed to execute and register the sale deed, then local commission may kindly be appointed who may execute the sale deed in favour of the plaintiff;
- (iii) That possession of the suit property may kindly be delivered to the plaintiff;
- (iv) That a decree for permanent injunction may kindly be granted in favour of the plaintiff against the defendants restraining the

defendants from transferring/alienating the suit land detailed in Para- 2 of the plaint by way of sale, lease deed, gift deed, will, court decree or by any other method to any other person except the plaintiff;

(v) Costs of the suit may also be awarded in favour of the plaintiff against the defendants;

(vi) Or any other relief which this Hon'ble Court deems fit and proper may also be granted in favour of the plaintiff against the defendants"

The trial Court has allowed the aforesaid application by observing that on the date when the suit was filed, date for execution and registration of the sale deed was yet to mature. Plaintiff-respondent had no other efficacious remedy, except to file a suit for permanent injunction with the prayer that the defendants be restrained from transferring/alienating the suit land by way of sale deed, lease deed, gift deed, will etc. After filing of the written statement, cause of action for specific performance has arisen.

Mr. Kunal Dawar, counsel for the petitioner, has vehemently argued in the present case, written statement was filed on 25.03.2009 and thereafter, issues were framed on 17.11.2009. Thereafter, the trial was fixed for evidence of plaintiff-respondent. After commencement of trial, the proposed amendment should not have been allowed. He has referred to the judgments passed by the Hon'ble Supreme Court in **K. Raheja Constructions Ltd. Vs. Alliance Ministries**, 1995 (59) DLT 3 and **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and others**, 2011 AIR (SC) 41, to contend that if the amendment is being sought after expiry of limitation to seek such relief, the said amendment cannot be allowed.

The above two judgments are not applicable to the facts of the

sale deed was agreed to be executed within six months, subject to sanctioning of mutation after getting the suit land partitioned amongst the co-sharers. Since the mutation had not been sanctioned and before that, the plaintiff-respondent apprehended that the defendants-petitioners would sell the property to some other third party, he filed a suit for permanent injunction restraining the defendants from transferring/alienating the suit land to any other person, except the plaintiff. In the written statement, which was filed on 25.03.2009, the defendants-petitioners had submitted that the agreement stood cancelled and the advance money stood forfeited. The cause of action to file a suit for specific performance was available with the plaintiff after filing of the written statement. He could file the same within a period of next three years i.e. till March, 2012. Hence, the aforesaid judgments passed by the Hon'ble Supreme Court are not helpful to the case of the petitioners.

In the present case, the defendants filed their written statement in March, 2009, wherein they have stated that the agreement stood cancelled and advance money stood forfeited. Hence, the plaintiff-respondent had a right to file a suit for specific performance within three years from March, 2009. Moreover, the Hon'ble Supreme Court in **Pankaja & another Vs. Yellappa (D) by LRs & others**, 2004 (3) RCR (Civil) 723 has held that a clear cut time barred claim should not be allowed to be included by way of amendment, however, where there is a disputed question of fact and law as to limitation, it could not be a sole ground for refusing amendment of plaint. In para No.14 of the judgment, it has been observed as under:-

“14. the law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to

allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

As per aforesaid judgment, in case of disputed questions of fact and law, the amendment of plaint can be liberally allowed.

Learned counsel for the respondent has referred to the agreement to sell dated 25.03.2007 executed between the parties, where there was a specific clause that the sale deed would be executed after the mutation is sanctioned and all the papers are complete. After sanctioning of the mutation when information was sent to the plaintiff, the limitation for registration of the sale deed would start from that date. But, no information with regard to sanction of mutation was given to the plaintiff. Moreover, the object of Order 6 Rule 17 CPC is that the Court may at any stage, can allow amendment of the pleadings, if such amendment is necessary for determination of real controversy between the parties.

In the facts of the present case, after framing of issues and before recording of evidence of the plaintiff, application (Annexure P-5) for amendment of plaintiff has been made. The cause of action to file this application became available to the plaintiff after filing of the written statement in March, 2009. The plaintiff had paid Rs.27,10,000/- to the defendants-petitioners as earnest money. Once, the defendants had cancelled the agreement and forfeited the advance amount, the plaintiff in all fairness, could file application for amendment of plaint by seeking specific performance of the agreement to sell in dispute. No injustice has

same has been allowed within limitation from the date of knowledge when the defendants had refused to execute the sale deed.

After going through the impugned order, this Court is of the view that the application for amendment of plaint has been rightly allowed by the trial Court in order to avoid multiplicity of litigation. No illegality, much less perversity has been found in the impugned order warranting interference by this Court.

Dismissed.

10.03.2016
ajp

(RITU BAHRI)
JUDGE