

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

Civil Revision No.5951 of 2016

Date of Decision: November 29, 2016

Ram Rakha Singh

...Petitioner

Versus

Sanjiv Kumar @ Birbal

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sherry K.Singla, Advocate,
for the petitioner.

Mr.Abhishek Singla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the impugned order, whereby the application seeking amendment of Para No.5 of the plaint at the stage of plaintiff's evidence, has been allowed.

Mr.Sherry K.Singla, learned counsel for the petitioner-defendant submits that the amendment sought at the stage of plaintiff's evidence is not only erroneous but tantamounts to taking away the right as the suit is for specific performance of the agreement to sell dated 27.5.2011 as the suit was filed on 24.12.2014. There is specific averment in the plaint that the respondent-plaintiff had gone to the office of Sub Registrar on 31.12.2011, whereas in the written statement, it was pleaded that on 31.12.2011 there was holiday and petitioner-defendant had approached the office on 2.1.2012. The affidavit filed in support of the evidence is not in consonance with the pleadings but with wrong intention as the respondent-

plaintiff wanted to seek amendment in the plaint at subsequent stage. After the cross-examination, the application for amendment has been moved. In a suit for specific performance, the issue of readiness and willingness is the most sensitive one and cannot be taken away in the manner and mode adopted by the respondent-plaintiff. All these aspects have not been appreciated and noticed by the trial Court and, thus, there is gross illegality and perversity.

Mr. Abhishek Singla, learned counsel for the respondent-plaintiff submits that it was due to typographical and inadvertence, the date aforementioned was mentioned, which was sought to be incorporated. No harm would be caused to the petitioner-defendant as he would be at liberty to cross-examine the respondent-plaintiff on this aspect. There are different parameters for allowing the amendment in the plaint and written statement and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the order under challenge is not sustainable, for, in a suit for specific performance, the ingredients of Section 16(c) of the Specific Relief Act are to be seen as to whether there is averment of the same by the respondent-plaintiff. A value right in the cross-examination has accrued in favour of the petitioner-defendant, which cannot be taken away at the behest of the respondent-plaintiff in the manner and mode adopted. Had the amendment been sought initially, i.e., at the stage of completion of the pleadings, the things would have been different. Moreover, the amendment does not suffice the requirement of amended provisions of Order 6 Rule 17 CPC as there is no compliance of the expression “with exercise of due diligence”.

In my view, the impugned order is ill-founded and devoid of merit and, therefore, set-aside.

Revision petition stands allowed.

November 29, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No