IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.67 of 2013 (O&M)
Date of decision:05.09.2016

The Singhpura Co-operative House Building Society Limited Zirakpur ... Petitioner

Vs.

Alamjit Singh Mann and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.C.S.Bakhshi, Advocate
for the petitioner.

Mr. S.K.Jain, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Petitioner-defendant No.1 is aggrieved of the impugned order dated 31.10.2012, whereby, an application filed under Order 6 Rule 17 of Code of Civil Procedure (hereinafter referred to as "CPC") at the instance of plaintiff seeking amendment of the plaint, has been allowed.

Mr. C.S.Bakhshi, learned counsel appearing on behalf of the petitioner submits that the plaintiff instituted a suit for mandatory injunction directing the petitioner-defendant to execute the sale deed which *ex facie* and *prima facie,* in view of the provisions of Section 41(h) of Specific Relief Act, 1963, was not maintainable. According to him, the cause of action to the un-amended plaint had accrued in the year 2004. The

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application for converting the suit from mandatory injunction to specific performance of the agreement to sell was moved in the year 2009 by alleging the cause of action of 2006 which has been allowed subject to payment of costs of Rs.5,000/- on the premise that plaintiff is yet to start his evidence. He further submits that the suit is of 2005 and the respondent-plaintiff is taking all possible steps to delay the proceedings by hanging sword, in essence, indulging into pressure tactics. The suit is hit by the provisions of Order 2 Rule 2 CPC, much less, provisions of law aforementioned and thus, urges this Court for setting of the impugned order by allowing the revision petition.

In support of his aforementioned contention, he relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s Virgo Industries Pvt. Ltd. vs. M/s Venturetech Solutions Pvt. Ltd. 2012(4) R.C.R.(Civil) 372** .

Per contra, Mr. S.K. Jain, learned counsel appearing on behalf of respondent No.1/plaintiff submits that as per the agreement to sell, time was not essence of the agreement. The pleadings cannot go beyond the terms and conditions of the agreement, if at all, it is so pleaded that date for payment of full and final was fixed 15.12.2004. During the course of arguments, he referred to the terms and conditions of the agreement to point out the aforementioned fact. He further submits that the Court fees had also been paid and though the costs has not been accepted and thus, urges this Court that amendment sought does not change nomenclature and nature of

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the suit. In fact, amendment sought is in view of the provisions of Section 41(h) of Specific Relief Act.

In rebuttal, Mr. Bakhshi submits that the petitioner had approached this Court vide CR No.1970 of 2009 decided on 21.07.2009, whereby, this Court had directed the trial Court to decide both the applications, filed under Order 6 Rule 17 CPC and Order 7 Rule 11 CPC. He further submits that the application filed under Order 6 Rule 17 CPC has been decided but the application filed Order 7 Rule 11 CPC is still pending. He submits that there is blatant violation of the directions issued by this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that petitioner-defendant No.1 is at liberty to take all possible legal pleas by filing amended written statement and also press for the issues. I am not commenting anything upon whether the time was essence of the agreement. 15.12.2004 was the only date for giving final payment. Thus, in my view, the ratio decidendi culled out by the Hon'ble Supreme Court in M/s Virgo Industries Pvt. Ltd.'s case **(**supra) would not be applicable at this stage. However, petitioner/defendant No.1 shall be at liberty to press for the framing of issues qua limitation and maintainability of the suit.

It is now well settled law as laid down by the Hon'ble Supreme Court that as and when the application under Order 7 Rule 11 CPC is filed, the same has to be decided in accordance with law and cannot be kept

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pending. As noticed above, there is already a direction issued by this Court but the trial Court remained oblivious of the same. In my view, the trial Court should not have committed such an illegality.

In view of the observations noticed above, the order under challenge is hereby upheld. Nothing observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

I further intend to issue a direction to the trial Court to dispose of the application under Order 7 Rule 11 CPC stated to be pending within a period of 15 days from the date of a receipt of certified copy of this order.

While upholding the impugned order, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

September 05, 2016
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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