

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1247 of 2016 (O&M)
Date of Order: 08.09.2017

Smt. Sarla Devi and another

..Petitioners

Versus

Ramphal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate,
for the petitioners.

Mr. Nipun Vashist, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Defendants are in revision petition, against the order dismissing application for amendment of the written statement.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell with respect to a plot measuring 101 Sq. yards.

Defendants contested the suit by filing the written statement.

After framing of issues, plaintiff started his evidence and one witness had been examined, whereas cross examination of two witnesses was deferred. However, at that stage the defendants filed an application for permission to amend the written statement with a view to plead that a residential house is constructed on the plot and the defendants shall suffer great hardship if the suit for specific performance is decreed.

Learned trial Court after noticing the facts that the trial has started, dismissed the application.

As per Section 20 of the Specific Relief Act, the relief of specific performance of agreement to sell is discretionary. It has been held by the Hon'ble Supreme Court that the plea of hardship cannot be examined by the Court unless there is pleadings to that effect and Court has framed a issue thereon.

Although, it is true that this plea was available to the defendants at the time when the written statement was filed on 19.09.2013, however, taking into consideration the fact that the agreement to sell is with respect to a plot, whereas it is the case of the defendants that the house has already been constructed even before the execution of the agreement to sell, amendment cannot be said to be frivolous.

In reply to the application, the existence of construction is not denied.

Taking into consideration the over all facts of the case, it would be in the interest of justice if the defendants are permitted to amend the written statement. Amendment as sought in paragraph 1 of the written statement is reproduced below:-

“i) That in reply to the para no.1 of the plaint it is stated that defendant no.1 is the mother of defendant no.2 and defendant no.1 has not entered into an agreement to sale in favour of plaintiff pertaining to the plot of 3.33 marla i.e.,101 sq. yds. of village Chandpur Ki Dhani, Tehsil & Distt. Rewari, although much prior to the date of disputed agreement there existed residential house of

defendant no.1 and she has constructed residential house over the above said plot soon after its purchase vide registered sale deed vasika no.2896 dated 22.7.2010 and thereafter obtained an electricity connection no.TCID No.2156 in her name and residing in the above said house shown with red colour in the site plan annexed herewith along with her family till date and defendant no.1 not needed to sell out her above said residential house which is also residential house and a roof over the head of defendant and it will cause great hardship to the defendant in case decree of specific performance is passed & in the matter and the defendant will be deprived off from residential house existing over the disputed plot.”

Learned counsel for the respondent-plaintiff has submitted that during the pendency of the revision petition, both the parties have concluded their evidence and therefore, he submits that the revision should not be allowed at this stage.

I have considered the submission of learned counsel for the respondent. However, delay in dismissal of the revision petition by this Court cannot visit the defendants with adverse consequences.

Learned trial Court is directed that on filing of the amended written statement, the Court would frame an additional issue and conclude the trial of the case within a period of four months.

Counsel for the defendants-petitioner has made a statement that he would not lead any evidence on the additional issue so framed by the

Court. Plaintiff would be granted one opportunity to lead evidence in support of his case with respect to the additional issue which would be framed by the Court.

The amendment is allowed subject to payment of Rs.10,000/- as costs.

September 08, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No