

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

CR No.1504 of 2017

Date of decision: 02.03.2017

Smt. Sheela Aggarwal

..Petitioner

Versus

M/s Infocom Digital System Ltd.

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 07.11.2016 (Annexure P-5) passed by Additional Civil Judge (Senior Division), Gurgaon, whereby, the application for framing of additional issues filed by the petitioner has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the petitioner-plaintiff filed a suit for specific performance, mandatory and permanent injunction on the basis of agreement to sell dated 15.01.1996 before the Delhi High Court but subsequently, it was transferred to the Court at Gurgaon having territorial jurisdiction. Written statement to the suit as well as replication were also filed. Issues were framed on 06.09.1999. During pendency of the suit, the petitioner-plaintiff filed an application for framing of additional issues, which was dismissed vide order dated 07.11.2016, which is subject matter of challenge in the present

revision petition.

Learned counsel for the petitioner submits that the civil Court has vast powers under the Code of Civil Procedure to frame the additional issues in case, which are necessary to adjudicate upon the controversy between the parties. The issues sought to be framed in the application are having much relevancy by considering the relief sought for in the suit. Learned counsel also submits that the application moved by the petitioner has been dismissed without giving any finding.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The facts relating to filing of suit, written statement, replication as well as framing of issues are not disputed. It is also not disputed that the issues were framed on 06.09.1999. Subsequently, during pendency of the suit, an application was moved for framing of additional issues, which has been dismissed.

The impugned order has been challenged on the ground that the additional issues sought to be framed are relevant for decision of the controversy between the parties but still the application moved by the petitioner has been dismissed.

The following issues were framed by the trial Court on 06.09.1999: -

- (i). Whether the defendant agreed to sell the Plot No.52, Sector 34, Gurgaon to the plaintiff vide agreement dated 15.01.96 and entire sale consideration of Rs.20 lacs had

already been paid to him as alleged?OPP

- (ii). If issue no.1 is proved whether plaintiff has been ready and willing to perform his part of contract? OPP
- (iii). If above issues are proved whether plaintiff is entitled to a decree for specific performance of agreement in question as alleged? OPP
- (iv). If the specific performance is not allowed, whether the plaintiff is entitled a decree of recovery of Rs.20 lacs alongwith interest @ 30% per annum compounded monthly? OPP
- (v). Relief? OPP

It has been mentioned in the impugned order that earlier application for amendment of the plaint moved by the petitioner-plaintiff, was also dismissed with the observation that the proposed amendment would change the nature of the suit and such evidence cannot be allowed. Subsequently, another application for framing of additional issues has been moved whereas the issues have already been framed which would cover the issues sought to be framed. It appears that an indirect method has been adopted after rejection of application for amendment of the plaint. How framing of additional issues is necessary to decide the controversy between the parties is not mentioned in the application as well as in the arguments raised before this Court?

Undisputedly, the Court has power to frame additional issues or amend or strike out issues at any stage under Order 14 Rule 5 read with Section 151 CPC.

In the present case, the issues were framed on 06.09.1999. It has been mentioned in the reply to the application that the additional issues sought to be framed relate to the pleadings, which were part of the application filed earlier for amendment of the plaint which had already been rejected vide order dated 18.11.2015. Subsequent application moved for framing of additional issues is an attempt to by-pass the order of rejection of amendment of the plaint. It was observed in the earlier application for amendment of the plaint that the proposed amendment would change the nature of suit. The relevant portion of the impugned order is reproduced as under: -

*“The plaintiff has moved the application in hand for framing the additional issues which on perusal clearly reveal that the same are related to the pleadings which were part of his application for the amendment of the plaint (which had been already rejected by the court vide order dated 18.11.2015) and therefore this application is nothing but an another attempt to by-pass the order of rejection of the amendment of the plaint. Furthermore, the issues which are necessary for the adjudication of the present case have already been framed and there is not need for framing of any other additional issue to decide the controversy emanating from the pleadings which are available on the file. Thus, this application for framing the additional issue is, hereby, **dismissed**”*

being totally devoid of merits. Now to come up on 22.11.2016 for arguments on the application for restoration of possession and application for leading additional evidence.”

Accordingly, I am of the view that no interference is required in the impugned order and as such, the revision petition being devoid of any merit is dismissed.

02.03.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No