

240

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

**Civil Revision No.4786 of 2016 (O&M)
Date of Decision: 03.10.2017**

Narinder Pal Singh

.....Petitioner

Vs

Jatinder Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Harsh Bunger, Advocate
for the petitioner.

Mr. Ajay Singla, Advocate for
Mr. Jitender Bansal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 19.08.2015 passed by the Civil Judge (Jr. Divn.) Jalandhar whereby application filed under Order 6 Rule 17 CPC for amendment of the plaint by the plaintiff/petitioner was rejected.

[2]. Brief facts are that the petitioner filed a suit for specific performance of agreement to sell dated 25.05.2007 executed by the defendant in favour of the plaintiff in respect of sale of Kothi No.766, as shown in the site plan. Permanent injunction was also sought restraining the defendant from alienating,

mortgaging, exchanging, gifting or selling the suit property, from parting with the possession of the suit property in favour of anyone else and also from changing the nature of the existing structure in any manner. Plaintiff alleged that he paid a sum of Rs.11,00,000/- as earnest money and the agreed rate was 3,95,000/- per marla. The payment was acknowledged in the presence of marginal witnesses. The target date was fixed on or before 02.10.2007 on payment of balance sale consideration. At the time of execution of the agreement to sell dated 25.05.2007, the original title deed of the property bearing no.4994 dated 07.09.2005 was referred to Collector, Jalandhar under Section 47-A of the Indian Stamp Act. The defendant undertook to clear the encumbrances before the date of execution of sale deed i.e. on or before 02.10.2007. Defendant failed to get the title deed cleared. Though the plaintiff was ever ready and willing to perform his part of obligation. Defendant demanded more money in order to clear the deficiency on the stamp duty as well as for other needs. The plaintiff paid an amount of Rs.7,00,000/- more towards earnest money which was duly acknowledged in the presence of witnesses and endorsement to that effect was made on the reverse of the agreement to sell. The time of execution of sale deed was extended upto 15.11.2007 with mutual consent of the parties. In this way, the total earnest

money to the tune of Rs.18,00,000/- was paid to the defendant which was duly acknowledged by him.

[3]. On the target date i.e. 15.11.2007, after informing the defendant, the plaintiff visited the office of Sub-Registrar, Jalandhar with the balance sale consideration. Prior thereto a notice was served upon the defendant on 11.11.2007. The plaintiff remained present throughout in the office of Sub-Registrar, but the defendant did not turn up to perform his part of obligation. Plaintiff got his presence marked by way of executing an affidavit on 15.11.2007. Thereafter the parties entered into a supplementary agreement to sell on 18.02.2008 vide which it was agreed that the plaintiff will deposit the deficiency in stamp duty to the Department on behalf of the defendant in respect of sale deed which was referred under Section 47-A of the Indian Stamp Act to the Collector, Jalandhar and after clearance of the sale deed, the defendant would execute the sale deed/power of attorney in favour of the petitioner or any other person of his own choice. As per the understanding, the plaintiff paid further sum of Rs.1,59,000/- to the defendant to get the deficiency cleared towards stamp duty. In this way, total earnest money came to the figure of Rs.19,59,000/-.

[4]. The defendant failed to perform his part of obligation

and thereafter defendant became dishonest and he resiled from the terms and conditions of the agreement to sell and sent notice dated 01.09.2008, whereby he refused to execute the sale deed. Thereafter the suit for specific performance came to be filed.

[5]. Defendant appeared and filed his written statement, thereby taking plea of cancelling the agreement to sell vide notice dated 01.09.2008.

[6]. On 06.03.2014, the defendant filed an application under Order 14 Rule 5 CPC for framing of additional issue. The said application was contested by the plaintiff. The trial Court vide order dated 24.07.2014 allowed the application for framing of additional issue and issue No.1-A '*Whether the suit seeking decree of specific performance without seeking the declaratory relief with respect to termination of the agreement of sale dated 25.05.2007 and rescinding the contract is maintainable?* OPP' was framed by the trial Court despite the fact that the issue in question was covered within the scope of issue No.1.

[7]. After acceptance of the application under Order 14 Rule 5 CPC, the petitioner filed an application under Order 6 Rule 17 CPC for amendment of the plaint seeking relief of declaration *qua* the legal notice dated 01.09.2008 vide which

agreement to sell was rescinded. The prayer clause, para No. 8-A and para No.14 of the plaint were sought to be amended/added. The reason for filing the application for amendment arose on account of decision rendered by the Hon'ble Apex Court in **I.S. Sikandar (D) by LRs vs. K. Subramani and others, 2014(1) R.C.R. (Civil) 236** whereby it was held that the challenge to the notice of cancellation should be made by the plaintiff in the suit itself. The said decision was rendered by the Hon'ble Apex Court on 29.08.2013. The application under Order 6 Rule 17 CPC came to be filed only after decision of the application for additional issue on 24.07.2014 and the same was filed in the month of August 2014. The said application has been dismissed by the trial Court vide the impugned order. That is how the present revision petition came to be filed before this Court.

[8]. Learned counsel for the petitioner vehemently submitted that though the parties have led their evidence after institution of the suit on 10.10.2008, but the decision in **I.S. Sikandar (D) by LR's** case (supra) came only on 29.08.2013 and after decision of the application under Order 14 Rule 5 CPC on 24.07.2014. Plaintiff/petitioner filed the application under Order 6 Rule 17 CPC promptly in the month of August 2014. The stage of the suit is immaterial as only a plea in the plaint is

sought to be added thereby challenging the notice of termination of agreement to sell dated 01.09.2008 without leading any further evidence by the plaintiff.

[9]. By relying upon the order dated 20.05.2015 passed in CR No.3481 of 2015 titled '*Amarjit Singh vs. Paramjit Singh Nijjar and others*' and ***Sharwan Kumar Mittal vs. Vibha Goel and others, 2015(7) R.C.R. (Civil) 943,*** learned counsel contended that the amendment based on decision of ***I.S. Sikandar (D) by LR's*** case (supra) would be in consonance with the pleading of the parties and would facilitate the Court to determine the real question in controversy between the parties. This would further avoid multiplicity of litigation. In substance the relief remained the same and challenge to the notice of cancellation of agreement to sell would be ancillary relief with the main relief sought in the suit itself. The amendment was necessitated in view of law laid down by the Hon'ble Apex Court in ***I.S. Sikandar (D) by LR's*** case (supra) vide which such a challenge was made mandatory.

[10]. On the other hand, learned counsel for the respondent has vehemently opposed the prayer on the ground that the cause of action for challenging the notice dated 01.09.2008 had become time barred on the date of filing of the application in the month of August 2014 as the suit was filed on 10.10.2008.

Learned counsel for the respondent relied upon **Bahadur Singh and another vs. Avtar Singh, 2007(3) R.C.R. (Civil) 44** and submitted that the amendment cannot be allowed after commencement of the trial. The petitioner was fully aware about the fact as the same was mentioned in the written statement itself. Factum of cancellation of agreement to sell vide notice dated 01.09.2008 was mentioned in para No.10 of the written statement and, therefore, filing of application at such a belated stage cannot be allowed.

[11]. Learned counsel also relied upon **Gurdev Singh vs. Tarsem Singh, 2017(3) R.C.R. (Civil) 488** to highlight the factors to be taken into consideration for allowing the amendment in the pleadings. Learned counsel emphasized upon the fact that the nature of the suit would be changed with the acceptance of the prayer for amendment of the plaint and the amendment is not *bona fide* in nature.

[12]. Learned counsel also relied upon that the acceptance of the application for framing of additional issue would not give rise for cause of action for filing the application for amendment of the plaint as the necessary facts were very much in the knowledge of the plaintiff even before filing of the application under Order 14 Rule 5 CPC. Learned counsel relied upon **Amar Singh vs. Pritam Singh and others, 2017(1) R.C.R. (Civil)**

320.

[13]. I have heard learned counsel for the parties.

[14]. Perusal of the record reveals that though the application for amendment of the plaint has been filed belatedly. It can be noticed that the suit was filed on 10.10.2008. **I.S. Sikandar (D) by LR's** case (supra) came to be pronounced by the Hon'ble Apex Court on 29.08.2013. Thereafter additional issue was sought to be framed by the defendant and the same was allowed vide order dated 24.07.2014 and the application under Order 6 Rule 17 came to be filed in the month of August 2014. In the meanwhile, both the parties had already led their evidence and the case was matured for arguments. The cause of action accrued in favour of the plaintiff/petitioner only after the judgment in **I.S. Sikandar (D) by LR's** case (supra) came to be pronounced by the Hon'ble Apex Court on 29.08.2013. Thereafter additional issue was allowed to be framed on 24.07.2014. Earlier to that issue No.1 was sufficient to answer the controversy between the parties.

[15]. By virtue of judgment in **I.S. Sikandar (D) by LR's** case (supra) challenge to the such type of notice for cancellation of agreement to sell has been made mandatory, therefore, it can be taken to be a case of accruing cause of

action w.e.f. 29.08.2013 i.e. the date on which the judgment in **I.S. Sikandar (D) by LR's** case (supra) came to be pronounced by the Hon'ble Apex Court. Framing of additional issue came to be allowed by the trial Court on 24.07.2014, therefore, in my considered opinion the decision in **Amar Singh's** case (supra) is distinguishable on the premise that there is plausible explanation on behalf of the petitioner to seek amendment in the pleadings after acceptance of the application for framing of additional issue. Prior to framing of additional issue, issue No.1 would have answered the exigency arising out of the pleadings and evidence on record, but since the respondent thought it appropriate to have the issue precisely on the basis of judgment given in **I.S. Sikandar (D) by LR's** case (supra), therefore, that gave rise to the plaintiff to seek corresponding amendment in the plaint. It is settled principle of law that the Court becomes *functus officio* only after pronouncement of the judgment. Prior thereto, the Court can visualise the necessity of any such amendment of pleadings or evidence in order to give just and appropriate decision in the case.

[16]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to

allow amendment at any stage, however knowledge and due diligence are the considerations on which *bona fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[17]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such

a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[18]. The facts involved in Sharwan Kumar Mittal's case (supra) were somewhat of similar nature and the Court by considering the compelling circumstances arising out of the judgment in **I.S. Sikandar (D) by LRs'** case (supra) allowed the amendment of the plaint. The Court also considered the power to allow the amendment at any stage. The Court also considered the wide amplitude of power for allowing such amendments on the basis of ratio laid down in **Prithi Pal Singh vs. Amrit Singh, 2014(1) R.C.R. (Civil) 327; Puran Ram vs. Bhaguram, AIR 2008 SC 1960** and **Abdul Rehman vs. Mohd. Ruldu, 2012(4) R.C.R. (Civil) 481**. The main purpose for allowing the amendment is to minimise the litigation. The plea regarding the amendment being time barred is also to be considered in the facts and circumstances of the case. If the

necessary factual matrix for amendment is already pleaded in the plaint, the relief sought on the basis of those pleadings would not change the nature of the suit and cause of action would not be altered in order to attract any such plea of limitation.

[19]. In the light of aforesaid legal position, I am of the view that the amendment in question can be allowed subject to curtailling plea of the plaintiff to lead any further evidence keeping in view of the stage of the case which is already fixed for arguments. The cause of action on the basis of **I.S. Sikandar (D) by LR's** case (supra) would give rise to mandatory compliance may be the subject matter of judicial interpretation, but at the time of deciding the application for amendment in the pleadings, ultimate merits of the case is not to be commented upon.

[20]. In view of above, the plaintiff can be permitted to place on record the amended plaint to challenge the notice dated 01.09.2008 by way of pleading and adding the paragraphs as prayed for without leading any evidence on record. This amendment shall however be subject to the payment of cost of Rs.15,000/- to be paid to the respondent. The payment of cost shall be the condition precedent for granting such indulgence by the trial Court in the aforesaid context.

[21]. Consequently, the revision petition is allowed and the impugned order dated 19.08.2015 passed by the Civil Judge (Jr. Divn.) Jalandhar is set aside.

October 03, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No