

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

**Civil Revision No.7672 of 2015
Date of Decision: 29.08.2017**

Amir Singh

.....Petitioner

Vs

Satwant Singh and another

....Respondents

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

Present: Mr. G.S. Bhatia, Advocate
for the petitioner.

Mr. Pankaj Bali, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the order dated 22.09.2015 passed by Addl. Civil Judge (Sr. Divn.) Khanna whereby application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint was rejected.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for possession by way of specific performance of the oral agreement of sale arrived at between the parties later on acknowledge and confirmed and reduced into writing in the form of writing dated 18.04.2005 executed by the defendants in

favour of the plaintiff in respect of the suit land as detailed in the plaint. Directions were sought against the defendants to receive the balance sale consideration from the plaintiff and to get the sale deed dated 25.05.2005 registered in favour of the plaintiff. Permanent injunction was also sought seeking to restrain the defendants from transferring and creating any encumbrance over the suit land. Besides seeking the aforesaid relief, mandatory injunction was also sought to be granted, thereby directing the defendants to complete the area of 3 acres at the spot and to hand over the vacant possession of the area. Any other suitable or alternative relief was also prayed in the facts and circumstances of the case to which plaintiff was found entitled by the Court.

[3]. The suit was contested by the defendants. When the suit proceedings reached at the stage of defendants' evidence, an application was filed under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint. It was pleaded by the plaintiff that in the application though in prayer clause of the plaint, the plaintiff has prayed for suitable and alternative relief, but the plaintiff wanted to add one more relief in the prayer clause at the end by adding the following relief:-

“if this Hon'ble Court comes to the conclusion that relief of specific performance cannot be granted due to any

reason, then in the alternative, a decree for recovery of Rs.2,00,000/- (Rupees Two lacs) with interest at the rate of 18% per annum, may please be passed and future interest may please be awarded at the same rate of interest.”

[4]. It was claimed by the plaintiff that the proposed amendment was formal in nature and would not change the nature of the suit in any manner. The application was contested by the defendants.

[5]. Trial Court vide order dated 22.09.2015 dismissed the application on the ground that the application was filed at the fag end of the trial, when the case was fixed for cross-examination of DW-1 and last opportunity was granted to the defendants to conclude their evidence. The proposed amendment was very much in the knowledge of the petitioner and he did not exercise his right with due diligence. The first application for amendment of the plaint was allowed on 09.08.2010 and at that time also plaintiff did not seek any such relief and the filing of second application for amendment was not maintainable. The defendants also contested the application on the ground that the same came to be filed at such a belated stage where the proposed relief has become time barred. The alternative relief of recovery was claimed after more than 7 years of filing of the suit and the trial Court dismissed the same primarily on the aforesaid grounds.

[6]. Learned counsel for the petitioner by relying upon Section 22 of the Specific Relief Act (hereinafter to be referred as 'the Act') contended that any person suing for specific performance of a contract may in an appropriate case, ask for

- (a) possession, or partition and separate possession, of the property, in addition to such performance or ;
- (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid by him, in case his claim for specific performance is refused.

No relief under the aforesaid clause (a) and (b) shall be granted unless it has been specifically claimed provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.”

[7]. Learned counsel further contended that the power of the Court to grant relief under the aforesaid clause (b) shall be without prejudice to its powers to award compensation under

Section 21 of the Act by referring to alternate prayer clause that 'any other suitable or alternate relief which this Hon'ble Court deems fit and the plaintiff is found entitled may please be passed in favour of the plaintiff' learned counsel contended that necessary pleadings have already been made in the prayer clause of the plaint and the proposed amendment is just an elaboration of the aforesaid alternate prayer which cannot be denied in view of proviso to Section 22(2) of the Act wherein the provision has been couched in mandatory manner, thereby the Court shall at any stage of the proceedings allow such a proposed amendment in the plaint on such terms as may be just for including a claim for such relief. The power of the Court in allowing the amendment is enshrined in Section 22(1)(b) shall be without prejudice to its power to award compensation under Section 21 of the Act.

[8]. Learned counsel emphasized that the proposed amendment in the manner as mentioned above has to be construed as per proviso to Section 22(2) of the Act which is mandatory in nature and that makes the provision distinct from other amendments. Learned counsel by relying upon **Padam Satyanarayana vs. Ravula Ramachandra Rao (died) per L.Rs, 2013(3) CivCC 417 (AP)** contended that the plaintiff can be permitted to amend the relief for the refund of the earnest

money at any stage as per proviso to Section 22(2) of the Act and the same is a special provision and it gives the power of amendment at any stage of the proceedings. Learned counsel referred to the proviso to sub-clause (5) of Section 21 of the Act which is unambiguous and enables the plaintiff to seek the amendment of the plaint at any stage of the proceedings. The conjoint reading of proviso to sub-clause (5) of the Section 21 or sub-clause (2) of Section 22 of the Act would make the expression 'at any stage' distinct and plea of limitation would not dilute the mandatory nature of the provision.

[9]. Learned counsel further contended that alternative prayer has already been made in the prayer clause of the plaint and the proposed amendment is just an elaboration of the relief which the Court can grant at any stage of the litigation. It would not change the nature of the relief in any manner, rather the same would facilitate the Court in arriving at just conclusion. Learned counsel by relying upon **Abdul Rehman and Anr. vs. Mohd. Ruldu and Ors., 2014(4) R.C.R. (Civil) 481** contended that all amendments are to be allowed and the powers of the Court are wide enough to be exercised at any stage of the litigation in the interest of justice and to minimise the litigation. The plea of limitation has to be considered in the facts and circumstances of each case.

[10]. Learned counsel by relying upon **Pothuraja Madhurama vs. Suroju Nagamani, 2011(5) ALT 633**

contended that the alternate relief for refund of the amount can be claimed at any stage of the suit proceedings and such an amendment can be allowed on the ground of limitation even if the amendment is sought belatedly, if sufficient factual background is present in the pleadings. The alternate prayer clause is already in existence in the plaint, therefore, denial of the proposed amendment is not justified in the law.

[11]. On the other hand, learned counsel for the respondents vehemently contended that the first amendment was allowed by the Court on 09.08.2010 and no such prayer was made at that time. The amendment in question has become time barred as the application has been filed after about seven years of filing of the suit.

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

[13]. Having considered the nature of amendment, this Court find that alternate prayer has already been made in the original prayer. The proposed amendment is just an elaboration of the alternate prayer thereby seeking qualified amount. The Court has to decide the case on the basis of material on record as to against whom the relief sought is liable to be confined. No

opinion can be given at this stage. The proviso to Section 22(2) of the Act is a special provision and it gives powers to the Court to allow amendment at any stage of the proceedings. If the provision is read in conjunction with the proviso to sub-clause (5) of Section 21 of the Act, the same would give an unambiguous reading and the provision which enables plaintiff to seek amendment of the plaint at any stage of the proceedings in order order to avoid multiplicity of suits.

[14]. The expression 'at any stage' means without limitation either in frequency or duration or length of time. The question of applying the provision of the Limitation Act would not attract in respect of provisions of Section 22(2) of the Act which is equitable remedy and the Courts are competent to grant the relief sought for or other specific relief which are incidental in nature. In some cases the contract becomes unenforceable and the party suffering losses can ask for damages in alternative in the suit. Reading of Section 22 of the Act and its sub clauses would make abundantly clear that the Courts are competent to grant relief sought for or other specific remedies which are incidental to the main relief. The acceptance of first application for amendment would not in any manner debar the plaintiff to seek amendment based on already existing alternative prayer in the prayer clause of the main suit which would not change the

nature of the suit in any manner.

[15]. The amendment in the pleadings is to be liberally construed so as to consider real dispute between the parties and to give effective adjudication thereof. 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 necessary considerations on which *bona fides* of the parties are to be tested in order to prevent frivolous applications. All *bona fides* amendments are to be allowed which are necessary for just decision of the case.

[16]. Order 6 Rule 17 CPC is in two parts. The first part is discretionary and leaves it to the Court to order amendment in the pleadings. The second part is imperative and enjoins the Court to allow all amendments which are necessary for determination of the real issues. The observation made by the Hon'ble Apex Court in **Ram Chandra Shakharaman Mahajan vs. Damodar Trimbak Tanksale, (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647** can be relied in the aforesaid context. If the provision in terms of Section 21(5) and 22(2) of the Act are read in conjunction with the aforesaid principles, the same would make the amendment lawful for consideration of the Court.

[17]. In view of above, this revision petition is accepted and the impugned order is set aside. Prayer clause of the plaint is allowed to be amended, however subject to payment of cost of Rs.10,000/- to be deposited by the petitioner in the District Legal Services Authority, Ludhiana. The payment of cost shall be the condition precedent for allowing indulgence for amendment of plaint by the trial Court.

August 29, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No