

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

CR No.8247 of 2015.

Date of Decision: 16.05.2017.

Ashwani

....Petitioner.

VERSUS

Sube and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.R. Hooda, Advocate for the petitioner.

Mr. Manoj Chahal, Advocate for the respondents.

SNEH PRASHAR, J.

The instant revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 17.11.2015 passed by learned Civil Judge (Senior Division), Bhiwani dismissing the application filed by the plaintiff-petitioner under Order VI Rule 17 of the Code of Civil Procedure (for short, 'the Code') for amendment in the plaint.

The relevant facts extracted from the record are as under:-

The petitioner filed a suit for recovery of an amount of Rs.16,68,750/- (Rs.15,00,000/- being the principal amount and Rs.1,68,750/- being the interest amount at the rate of 15% per annum) on the ground that the respondents had entered into an agreement to sell with him (petitioner) on 23.06.2010 in respect of their land measuring 48 Kanals 4 Marlas at the rate of Rs.14,00,000/- per acre. A sum of Rs.15,00,000/- was

target date for execution and registration of the sale deed was fixed as 23.12.2010. On the agreed date i.e. 23.12.2010, the respondents did not come forward to execute the sale deed. A week thereafter, he (petitioner) came to know that a civil suit for declaration challenging the title of the respondents over the suit property was pending in the Court. In such circumstances, he filed the instant suit for refund of earnest money of Rs.15,00,000/- alongwith interest.

During pendency of the suit for recovery, the petitioner filed an application under Order VI Rule 17 of the Code for amendment in the plaint so as to claim the relief of possession by way of specific performance of the agreement to sell dated 23.06.2010 alleging that the civil suit challenging the title of the respondents had been decided in their favour on 19.01.2015 and the decision has cleared the title of the respondents.

The application was contested by the respondents. Considering the submissions made by counsel for the parties, learned trial court dismissed the application of the petitioner vide order dated 17.11.2015.

Aggrieved of the order dated 17.11.2015, the petitioner preferred the instant revision petition.

The submissions made by Mr. S.R. Hooda, learned counsel representing the petitioner and Mr. Manoj Chahal, learned counsel representing the respondents have been heard.

Learned counsel for the petitioner argued that execution of the agreement to sell dated 23.06.2010 was not denied by the respondents. Rather, during the suit proceedings, the respondents filed an affidavit that they are ready and willing to get the sale deed executed. The petitioner at that time did not accept the terms of the respondents as the civil suit

challenging the title of the respondents was pending. After the civil suit was decided and the title of the respondents got cleared, the petitioner filed an application under Section 151 of the Code for direction to the respondents to get the sale deed executed. Since the respondents refused to do the needful and the application filed by the petitioner was dismissed on the ground that he had not sought relief of specific performance of the agreement to sell and had only sought refund of earnest money, the petitioner filed the instant application for amendment in the plaint so as to claim the relief of possession by way of specific performance of the agreement to sell. Learned counsel asserted that with the said facts in the backdrop, learned trial court erred in dismissing the application of the petitioner-plaintiff for amendment in the plaint. It is a settled proposition of law that the provision of amendment has to be interpreted to advance the justice and not to retard or defeat the justice.

On the other hand, learned counsel for the respondents argued that from the initial stage, the respondents were ready and willing to execute the registered sale deed, but it is the petitioner who committed breach of terms of the agreement of sale and opted for refund of the earnest money. Due to the option exercised by the petitioner, now after a lapse of five years the petitioner has lost the right to seek specific performance of the agreement which otherwise also is a relief discretionary in nature.

Admittedly, the agreement to sell between the parties was executed on 23.06.2010 and the instant suit, as is apparent from the impugned order, was filed by the petitioner on 31.03.2011 i.e. three months after the target date for execution and registration of the sale deed. When he filed the suit for recovery, the cause of action to file a suit for specific

performance of the agreement to sell was available to the petitioner, however, he opted to file a suit for recovery of the earnest money paid by him. The option exercised by him amounted to giving up the claim of specific performance of the contract and now he cannot be allowed to enforce the claim which he had given up by choice.

The matter does not end here. As mentioned by learned trial court in Para No.5 of the impugned order and also submitted during arguments by learned counsel for the petitioner, at the initial stage of the suit the respondents had filed an affidavit that they were ready and willing to get the sale deed executed. At that stage also, the petitioner did not accept the plea of the respondents and he impliedly rescinded the contract between the parties. The relief, which had been given up by the petitioner and has also become time barred, cannot now be claimed by filing an application for amendment of the plaint. The application of the petitioner was rightly dismissed by learned trial court.

Thus, the order passed by learned trial court suffers from no perversity, illegality or jurisdictional error warranting interference and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

16.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**