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

**CR No.8491 of 2016**
**Date of Decision-05.09.2017**

Parag Infratech Pvt. Ltd. ... Petitioner

Versus

Krishan Kumar (since deceased) and others ... Respondents

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

Present: Mr. Amit Jaiswal, Advocate
for the petitioner.

Mr. Karan Vir Nanda, Advocate
for the respondents.

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***__RAJ MOHAN SINGH, J.__***

[1]. Petitioner has challenged the order dated 07.11.2016 passed by Civil Judge (Junior Division), Chandigarh, vide which application under Order 1 Rule 10 CPC filed by the petitioner was dismissed.

[2]. Gulshan Wadhawan/respondent No.5 entered into an agreement to sell dated 17.11.2011 with Ram Sarup (predecessor-in-interest of respondents No.1 to 4) for purchase of 1/4$^{th}$ share in agricultural land measuring 71 kanals, 2 marlas situated in village Kaimbwala, U.T. Chandigarh. According to this agreement to sell, the seller will clear all outstanding dues against the property and also complete all sort of works of the land as and when required by the purchaser before the completion of the bargain. The said seller

shall get the leveling of the said land along with fencing at his own cost. The seller shall divide his land and get the land marked with khasra number individually in which it falls in revenue record of the village before the completion of the bargain. The purchaser has a right to get the sale effected in his own name or in the name of his nominee/assignee and the seller shall have no objection for the same at a later stage. An amount of Rs.66,65,625/- was paid i.e. Rs.15,00,000/- vide demand draft dated 16.11.2011, Rs.25,00,000/- vide demand draft dated 17.11.2011, Rs.15,00,000/- vide demand draft dated 17.11.2011 and Rs.11,65,625/- in cash in the shape of Indian Currency. The amount was paid by the petitioner from the bank accounts as well as in cash. Respondent No.5/Gulshan Wadhawan was an employee of the petitioner and was authorized by the petitioner to enter into the aforesaid agreement to sell and to issue receipt on behalf of the petitioner-Company. Respondent No.5 was involved in part time business of property dealing to which the petitioner had no objection.

[3]. After initiation of the aforesaid deal with Ram Sarup, the petitioner-Company paid the earnest money in the aforesaid term. Ram Sarup died and he did not comply with the conditions of agreement to sell during his lifetime in terms of Clause-4 of the Agreement, which was in respect of completion of formalities of leveling, partition and marking of khasra numbers individually in the revenue record. Neither leveling was done, nor the fencing was

done on the suit property. The conduct of the vendor led to non-finalization of the deed and after the death of Ram Sarup, his legal representatives tried to wriggle out of the agreement which ultimately compelled the plaintiff to file the suit for specific performance of agreement to sell dated 17.11.2011. Though the suit was filed by Gulshan Wadhawan/respondent No.5, but the same was not properly conducted as he lost the interest or colluded with the vendor.

[4]. Plaintiff while examining himself did not produce the original agreement to sell dated 17.11.2011. The original agreement to sell was with the petitioner and the petitioner had paid the entire earnest money. In reality, the petitioner is the real purchaser. While leading evidence, the plaintiff neither contacted the petitioner, nor made any effort to collect the original agreement to sell from the petitioner for producing the same on record of the case. Plaintiff even did not lead any evidence to show his financial capacity to enter into the deal. The land was to be purchased by the petitioner-Company and the petitioner-Company was always ready and willing to purchase the land and is still having resources to purchase the land in question. Plaintiff while appearing as a witness (PW2) has admitted the fact that the advance payment was made to Ram Sarup from the company's account namely M/s Parag Infratech Pvt. Ltd. i.e. the petitioner. In view of aforesaid, the petitioner-Company

moved an application under Order 1 Rule 10 CPC for impleading the petitioner-Company as plaintiff.

[5]. It was pleaded that the plaintiff was an ex-employee of the applicant/petitioner who had worked as Marketing Executive with the petitioner-Company. Vide resolution of the Company, the plaintiff was authorized to enter into an agreement to sell for execution of the sale deed on behalf of the petitioner-Company and to issue receipts of payment on behalf of the petitioner-Company. In pursuance of the said authorization, the plaintiff entered into an agreement to sell on 17.11.2011 with Ram Sarup. The total consideration was fixed as Rs.2,22,18,750/-, out of which earnest money to the tune of Rs.66,65,625/- was paid to Ram Sarup (since deceased) through pay orders and cash as shown in the earlier part of the order. Due to non-performance of agreement to sell on the part of the LRs of the vendor, the suit came to be filed. Since the sale deed could have been executed in the name of vendee or in the name of assignee, therefore, being the real purchaser, the petitioner-Company can take over the cause of the plaintiff as the plaintiff has failed to take interest in the litigation on material front. Plaintiff has become ineffective in the litigation as he did not collect the original agreement from the petitioner-Company and has not exhibited the same, even though the entire payment of earnest money was made by the petitioner-Company. In the event of any latch or omission on the part of the plaintiff, petitioner-Company is

the only person who will suffer and in such eventuality, the petitioner-Company cannot be compensated in any manner.

[6]. The application was dismissed by Civil Judge (Junior Division), Chandigarh vide order dated 07.11.2016 on the ground that petitioner was not privy to the agreement to sell. Merely because the amount of earnest money was paid by the petitioner-Company will not make the petitioner-Company to be a necessary party to the suit. Trial Court has also observed that nothing has been mentioned in the agreement to sell in respect of the petitioner's entitlement qua the suit property. The suit was filed on 15.11.2014 and the delay in filing the application was also taken to be a ground for rejection of the application.

[7]. I have considered the arguments raised by learned counsel for the parties.

[8]. Apparently, petitioner-Company was not the party to the agreement to sell, but in the agreement to sell, Clause No.6 was in specific term that the purchaser has a right to get the sale deed executed in his favour or in the name of his assignee or any other person or persons whomsoever they like and the seller shall have no objection for the same at any later stage. The aforesaid condition coupled with the statement of the plaintiff in his cross examination that the amount of earnest money was paid by the petitioner-Company, made a positive case of involvement of the petitioner-Company in the transaction in question. In the event of any failure

on the part of the plaintiff, only petitioner-Company is the aggrieved person who will suffer irreparable loss. Even vendee got his presence marked before Sub Registrar on 01.03.2012, which was duly proved by affidavit Ex.P8. The bank certificate regarding issuance of two demand drafts in a sum of Rs.25,00,000/- and Rs.15,00,000/- from the account of M/s Parag Infratech Pvt. Ltd. was duly highlighted. Similarly, bank certificate regarding issuance of demand draft of Rs.15,00,000/- from the account of Swaran Singh, Director of M/s Parag Infratech Pvt. Ltd. was duly highlighted in order to bring out the case in favour of the applicant/petitioner for necessary impleadment.

[9]. On the strength of aforesaid documents, the petitioner had been able to show semblance of interest in the property and therefore, the petitioner was entitled to be impleaded as plaintiff. A person showing semblance of title or interest is a necessary party to be impleaded in order to avoid multiplicity of proceedings, because in the event of rejection of the application for impleadment, the petitioner will have to wait till a decree is passed against the plaintiff and then file a suit for cancellation of the said decree. Such a proposition cannot be countenanced. On showing semblance of interest in the property, the embargo created under Section 15 of the Specific Relief Act would not be applicable. The presence of the petitioner in the suit proceedings would facilitate the Court to adjudicate the matter in an effective manner. In any case, the

adverse decision of the case would adversely effect the rights of the petitioner and would lead to multiplicity of the litigation. A right has been created in favour of the plaintiff in the agreement to sell that he could get the sale deed executed either in his favour or in favour of his assignee. Since the petitioner-Company has parted with huge amount towards payment of earnest money, therefore, petitioner-Company is the only interested person who is to suffer in the event of decision of the suit goes against the plaintiff. The presence of the petitioner would enable the Court to pass an effective decree. Petitioner-Company is a proper party and its presence would facilitate the trial Court to adjudicate the issue completely, effectively and properly, even though the petitioner-Company may not be a person in favour or against whom a decree is to be passed.

[10]. Learned counsel for the respondent vehemently opposed the submissions of learned counsel for the petitioner on the ground that in view of omission on the part of the plaintiff, bilateral understanding between the parties has to be answered on the touchstone of enforceability of the agreement to sell on definite parameters and the petitioner cannot improve the case of the plaintiff by way of such an intrusion. On a pointed question, whether LRs of vendor Ram Sarup are still ready to honour the agreement to sell or ready to pay back the earnest money with interest, the answer was in negative and learned counsel for the respondent kept on pleading that the plaintiff has defaulted in performing his

part of obligation, therefore, neither the sale deed can be executed, nor the amount of earnest money can be refunded.

[11]. In the light of aforesaid facts, I deem it appropriate to accept this revision petition. Impugned order dated 07.11.2016 passed by Civil Judge (Junior Division), Chandigarh is hereby set aside. Necessary consequences to follow.

**(RAJ MOHAN SINGH)**
**JUDGE**

05.09.2017
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**Whether reasoned/speaking** **Yes/No**

**Whether Reportable** **Yes/No**