

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 833 of 2017

Date of Decision: 16.12.2017

Krishan Singh

---Petitioner

versus

Brijpal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ajay Jain, Advocate
for the petitioner**

**Mr. A.K.Jain, Advocate,
for the respondent**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 3.1.2017 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Rewari whereby application filed by the plaintiff/respondent under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (in short "CPC") for amendment of the plaint has been allowed.

Counsel for the petitioner/defendant would argue that the respondent/plaintiff filed a suit for specific performance of agreement dated 10.4.2009 in respect of land, detailed in para 1 of the plaint. The parties adduced evidence in support of their respective contentions. The arguments were advanced and the case was fixed for orders when the instant application dated 29.8.2016 was filed for amendment of the plaint. It is argued with vehemence that no such application for amendment of the

plaint could be entertained much less accepted by the trial court at highly belated stage after conclusion of arguments, therefore, order impugned cannot be allowed to sustain and liable to be set aside.

Counsel representing the respondent/plaintiff, on the contrary, has supported the impugned order with the submission that under Section 22 of the Specific Relief Act, 1963 (in short “the Act”) the plaintiff is competent to claim any such relief envisaged under clause (a) or (b) of sub section (2), at any stage of the proceedings. It is further argued that keeping in view wider scope of proviso appended to sub section (2) of Section 22 of the Act, discretion exercised by the trial court allowing amendment of the plaint to add the relief of possession cannot be faulted with. In addition, it is argued that apprehension expressed by the respondent/defendant that allowing the proposed amendment will result in *de novo* trial, is misconceived as the respondent does not intend to adduce any evidence after amendment of the plaint.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

No doubt, the respondent/plaintiff in the application (Annexure P-2) in para 1 has mentioned that the case is pending for orders but the trial court in para 4 of the order impugned has held that the case was fixed for rebuttal evidence with last opportunity on the date of filing of the application. Counsel for the petitioner has not disputed this factual observation recorded by the court. In the circumstances, any such contention of the petitioner that as the case was fixed for orders, the court was rendered functus officio, is untenable and liable to be rejected.

Indisputably, by way of proposed amendment, the respondent

has sought to add the words 'suit for possession" in a suit for specific performance of agreement to sell dated 10.4.2009.

Section 22 of the Act deals with power to grant relief for possession, partition, refund of earnest money etc. A relevant extract therefrom reads as follows:-

22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property 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 or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court 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.

(3) Xxxx

xxxx

xxxx

Clause (a) of sub Section (1) of Section 22 entitles a person suing for specific performance of contract of transfer of immovable property to ask for possession in addition to such performance. Sub section (2) contemplates that no relief under clause (a) or clause (b) of sub section (1) shall be granted by the court unless it has been specifically claimed meaning thereby that any relief envisaged under clause (a) or clause

(b) shall be granted only if it has been specifically claimed. However, proviso appended to sub section 2 mandates thus, gives vast powers to the court to allow amendment of the plaint at any stage of the proceedings to include the relief of possession or partition and separate possession, refund of earnest money or deposit paid etc. In this view of the matter, power exercised by the court below allowing the respondent to add the relief of possession on payment of costs of Rs. 7000/- cannot be faulted with.

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

16.12.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No