

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

CR-1169-2017 (O&M)

Date of decision : 20.4.2018

Ashok Kumar Batta

..... Petitioner

Versus

Sharanjit Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Nitn Thatai, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for respondent No. 1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 18.1.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Ludhiana vide which application filed by the petitioner-plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint has been dismissed.

Heard.

It comes out that petitioner-plaintiff filed a suit for possession by way of specific performance of agreement of sale dated 30.11.2011. He had also sought permanent injunction against the defendants.

During the proceedings, when the case was at the stage of evidence of defendants, an application was filed by plaintiff-petitioner in which it was stated that defendants No. 1 and 2 had issued a notice through

their advocate dated 1.8.2013 wherein they had stated that agreement of sale dated 30.11.2011 stands canceled and the earnest money of Rs. 8,50,000/- stands forfeited. Plaintiff-petitioner want to challenge the said notice dated 1.8.2013.

It comes out that suit was filed on 9.9.2013 and the application was filed on 3.11.2016. The question arising before this Court is as to whether the amendment can be allowed in the circumstances, particularly, when the defendants claimed that it was filed at belated stage and the amendment is time barred?

A perusal of the plaint shows that in the plaint, the possession by way of specific performance of the agreement of sale was prayed for. In the plaint itself it was stated that defendants No. 1 and 2 had issued a notice dated 1.8.2013 through their counsel Shri Shaiwal Gupta informing the plaintiff that agreement of sale dated 30.11.2011 stood cancel and an amount of Rs. 8,50,000/- paid as earnest money stood forfeited. It was further pleaded that defendants were not justified in canceling the agreement of sale and forfeiting the earnest money as the plaintiff has always been ready and willing to perform their part of agreement of sale and also ready with the balance sale consideration, stamp and registration charges. In the plaint, plaintiff has already put a challenge to the said notice. Now he want to add the relief that the said cancellation is not justified which is in view of this Court is ancillary to the main relief since the plaintiff has already filed the suit for specific performance of the said agreement. Now the question would arise as to whether the challenge to the said notice is barred by limitation or not?

I am of the view that in the given circumstances, it will be a mixed question of fact and law as to whether the said prayer for setting aside the said notice of cancellation is time barred or not? Therefore, it is not deemed proper to comment on the same at this stage.

Learned counsel for the petitioner relies upon a judgment delivered by Hon'ble Supreme Court titled as **Puran Ram versus Bhaguram and another, 2008(2) RCR (Civil) 499**, wherein it was held that even if the relief is time barred, such amendment can be allowed. Further reliance is placed upon another judgment delivered by Hon'ble Supreme Court titled as **Pankaja and another versus Yellapa (D) by LRs and others, 2004 (3) RCR (Civil) 723**.

Further the question arises whether the amendment can be allowed at the belated stage? Learned counsel for the petitioner contends that petitioner does not want to lead any additional evidence as the evidence already led is sufficient to prove his case.

In view of the matter, it cannot be said that the amendment is aimed at for delaying the disposal of the case. Though the said notice was within the notice of plaintiff but apparently due to inadvertence, no prayer for setting aside the said notice was made. Therefore in order to do complete justice between the parties and effectively decide the controversy, such prayer also requires to be decided which is otherwise the defence of the defendants and has to be otherwise decided.

As such, present revision petition is allowed. The proposed amendment is allowed with the condition that plaintiff shall not be allowed to lead additional evidence regarding the said prayer.

It shall always be open to the defendants to raise the plea of limitation in their amended written statement.

Allowed as above.

Since, the main petition is allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

19.4.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No