

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1370 of 2017
Date of Decision : 11.05.2018

Balwinder Singh

.....Petitioner

Versus

Chanchal Singh @ Sukhchain Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Kushagra Mahajan, Advocate for the petitioner.
Mr. G.S.Nagra, Advocate for respondents No.2 and 3.

ARUN PALLI, J. (Oral)

The plaintiff is in revision against the order dated 5.12.2016, rendered by the Civil Judge (Jr. Division), Ajnala, vide which his application seeking amendment in the plaint has since been declined.

In a suit filed by the plaintiff he prayed for a decree for specific performance of the agreement to sell dated 2.7.2011, executed by defendant No.1 in his favour regarding a land measuring 29 kanals 18 marlas. He had also challenged the three sale deeds dated 4.7.2011, executed by defendant No.5, in favour of defendants No.2 and 4, for, a land measuring 9 kanals 18 marlas each. A sum of Rs.10 lacs purport to have been paid to the defendants by way of earnest money at the time of execution of the agreement. And, by way of proposed amendment all what the petitioner wish to claim is an alternative relief for refund of Rs.10 lacs along with damages to the equal amount of earnest money with interest. A bare analysis of the impugned order reveals that the precise ground upon which

the amendment has been declined is: the present suit was filed on 2.8.2011, whereas the application under Order 6 Rule 17 of the CPC was moved on 21.10.2016. Therefore, after a period of 5 years and two months, the claim the petitioner intends to make by way of amendment had since become time barred. For, the limitation to recover the money payable is three years from the date it became due.

Learned counsel for the petitioner submits that the reasons assigned by the trial Court in support of its order is erroneous as the provisions of Section 22 of the Specific Relief Act, 1963 (for short 'the Act') appear to have been completely overlooked. He has also placed reliance upon the decision of this Court in **Kamal Kant Vs. Rajinder Kumar, 2004(1) RCR (Civil) 372**, to contend that the nature of amendment was such that it could not be declined.

Before I proceed further it would be apposite to refer to the provisions of Section 22 of the Act, which reads thus:-

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 (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 proceedings, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause (b) of sub Section (1) shall be without prejudice to its powers to award compensation under Section 21”.

Ex facie, a bare reading of the provisions, referred to above, reveals that the relief claimed under clause (a) or (b) of sub Section 1 shall not be granted unless it is specifically prayed for. And proviso to sub Section (2) of Section 22 postulates: where the plaintiff has not claimed any such relief the Court shall at any stage of the proceedings allow him to amend the plaint. What needs to be noticed is that regardless of the stage reached in the suit, once such an amendment is sought the Court shall allow the plaintiff to amend the plaint. For, even the alternate relief, is based upon the same cause of action, therefore, once the suit seeking specific performance of the agreement to sell is instituted within limitation, the question of an alternate relief having become time barred would not arise. In similar circumstances, this Court while considering the prayer for amendment in the suit, so as to pray for an alternate relief, in Kamal Kant (supra), while allowing the amendment held:-

8. “From a perusal of Section 22 of the Act, it

would be clear that notwithstanding anything to the contrary contained in the Civil Procedure Code, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may in an appropriate case ask for possession or partition and separate possession of the property in addition to such performance or may ask for any other relief of any earnest money etc. in case his claim for specific performance is refused. It is further provided that where the plaintiff had 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.

9. In my opinion, from the provisions of Section 21 of the Specific Relief Act, 1963, it would be clear that the Court is competent to grant compensation to the plaintiff for the breach of the contract by the defendant, where the Court decides not to grant the relief for specific performance and that if no such claim has been made, the Court shall at any stage of the proceeding allow him to amend the plaint for including a claim for such compensation. In the present case the plaintiff had originally filed a suit for specific performance of the agreement to sell dated 17.03.1992. However, he failed to seek the alternative relief of payment of compensation in case the decree for specific performance was not passed in his favour. For this purpose the plaintiff filed an application seeking to amend the plaint and to claim the said relief as an alternative relief. In my opinion, this prayer made on behalf of the plaintiff was in consonance with the provisions of Section 21 of the Specific Relief Act. I am further of the opinion that the learned trial Court was obliged to allow the plaintiff to amend the plaint so as to

include the aforesaid relief of compensation as an alternative relief to the claim for specific performance of the agreement to sell. I am further of the opinion that in such circumstances there would be no question of such a claim being barred by time especially when Section 21 of the Specific Relief Act specifically empower the court to allow such amendment so as to claim such relief for compensation in a suit for specific performance. In this view of the matter, in my opinion, no case was made out for refusing the plaintiff to amend the plaint in this regard. I am further of the opinion that the learned trial Court erred in law in refusing the plaintiff to amend the plaint so as to claim the relief of compensation as an alternative prayer.

Learned counsel for the respondents, could not refer to any provision that would dis-entitle the petitioner to claim the proposed amendment. Nor any precedent was cited to show, that in the given situation, the claim for an alternate relief would be time barred.

In conspectus of the above, the revision petition is allowed, and the impugned order dated 5.12.2016 is set aside. Accordingly, the application moved by the petitioner/plaintiff under Order 6 Rule 17 of the CPC is accepted. Parties through their respective counsel shall appear before the trial Court on 29.05.2018, the date already fixed. Needless to state that the stay order dated 9.3.2017, stands vacated.

11.05.2018

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No