

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3637 of 2014 (O&M)
Date of Order:07.02.2018

M/s Countrywide Promoters Pvt. Ltd.

..Petitioner

Versus

Rambir and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hemant Saini, Advocate,
for the petitioner.

Mr. Kulbhushan Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-petitioner is in revision petition against the order passed by the learned trial Court, dismissing application under Order 6 rule 17 of the Code of Civil Procedure for permission to amend the plaint and add the relief of specific performance of the agreement to sell.

Learned trial court has dismissed the application on the ground that the application is pre-mature. The court has noticed that as per the agreement to sell, defendants were required to get the land partitioned and mutated in their favour and since the defendants have failed to do that, therefore, the application for amendment is pre-mature because cause of action to file a suit for specific performance of the agreement to sell would arise only after the land is partitioned and mutated in favour of the defendants.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed in this revision

petition.

Learned counsel for the petitioner has vehemently argued that the agreement to sell was entered into on 12.05.2006. The plaintiff filed a suit for injunction on 12.08.2008. Defendants filed their written statement on 16.05.2008 pleading that there was no undertaking on the part of the defendants to get the mutation of the land sanctioned in their favour. It was further pleaded that the earnest money paid stands forfeited and the agreement stands cancelled as the plaintiff has failed to pay the sale consideration. He submitted that in view of the stand taken by the defendants, the application for amendment of the plaint cannot be said to be pre-mature.

On the other hand, counsel for the defendants-respondents has submitted that in fact the amendment sought is barred by time as in the previous part of the agreement to sell, the date for execution of the sale deed was fixed as 12.10.2006, however, in the later part, there was stipulation with regard to getting the mutation entered and partition of the land. He has further referred to an order passed by the Assistant Collector, dated 29.05.2007 while asserting that the partition has already been taken place.

In any case the order passed by the learned trial Court is totally erroneous. The amendment sought for by the plaintiff cannot be said to be pre-mature in view of the stand taken by the defendants in their written statement. Once the defendants had pleaded that the agreement stands cancelled and the earnest money stands forfeited, learned trial Court committed a serious illegality in dismissing the application as pre-mature.

In view of what has been recorded hereinabove, the application for amendment is allowed, the impugned order dated 24.04.2014, is set

aside. The objection with regard to limitation as raised by learned counsel for the defendants-respondents is kept open. Defendants shall be entitled to raise all objections before the trial Court.

The revision petition is allowed.

February 07, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No