

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

**CR No.4656 of 2014
Date of Decision:29.01.2018**

Subhash Kumar Bansal

...Petitioner

Versus

Harwinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Arihant Jain, Advocate for the petitioner.
Mr.G.S.Toor, Advocate for the respondents/

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against the order dated 16.4.2014, allowing the application filed by the plaintiff to amend the plaint.

The plaintiffs had filed a suit for mandatory injunction for issuing directions to defendant No.1 to get the sale-deed executed and registered as per agreement to sell dated 18.3.2011. The suit was instituted on 12.8.2011.

It is the case of the plaintiffs that since the plaintiffs have not got the sale-deed executed, therefore, as per the terms of agreement to sell, the earnest money stands forfeited.

The learned trial court has allowed the plaintiff to amend the plaint by adding as under:-

“The earnest money so paid by the defendant No.1 to plaintiffs and defendant No.2 are at liberty to sell their land to any third party”

I have heard the learned counsel for the parties at length.

Learned counsel for the defendant-petitioner has vehemently argued that the application for amendment allowed by the court is resulting into changing the nature of the suit from mandatory injunction to a suit for declaration that the earnest money stands forfeited. He has further submitted that such amendment cannot be permitted.

On the other hand, learned counsel for the respondents has submitted that amendment sought in the plaint is a subsequent development as the defendant-petitioner failed to get the sale-deed executed. He has further submitted that as per the agreement, once the defendant-petitioner, who was a prospective purchaser, has failed to comply with the terms of the agreement, forfeiture of the earnest money is automatic.

I have heard the submissions of the learned counsel for the parties.

In the considered opinion of this Court, there is no change in the basic structure of the suit. The suit has been filed on the basis of a written agreement to sell entered into between the parties on 18.3.2011. The suit was instituted on 12.8.2011. As per the agreement to sell, the sale-deed was to be executed on 5.8.2011. The amendment sought for is emanating from non-performance of the agreement to sell. The Court has noticed that the suit is at its initial stage.

In view thereof, there is no scope for interference in the impugned order passed by the learned trial court.

Dismissed.

29.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No