

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6927 of 2017 (O&M)
Date of Order:25.01.2018

Yashpal

..Petitioner

Versus

Satinder Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate,
for the petitioner.

Mr. Piyush Khanna, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Plaintiff-petitioner is in revision petition against the order dated 06.09.2017, dismissing the application under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 08.04.2011. The defendant contested the suit and pleaded that there was a previous agreement between the parties dated 25.06.2010. However, the plaintiff failed to perform his part of the duty and therefore, the previous agreement to sell had come to an end.

Since, the defendant had pleaded an agreement to sell dated 25.06.2010, therefore, the plaintiff filed an application for direction to the defendant to produce copy of the agreement. However, the defendant came up with a stand that agreement to sell dated 25.06.2010 is not in his possession.

Thereafter, plaintiff filed an application under Section 65 of the Indian Evidence Act for permission to lead secondary evidence, so as to prove existence of agreement to sell dated 25.06.2010 (previous), which according to the plaintiff had been cancelled. The application was allowed. Plaintiff was granted permission to lead secondary evidence. The case is now at the stage of plaintiff's evidence and affidavits of the witnesses in examination-in-chief have been tendered.

Plaintiff realizing that there is no pleading with respect to agreement to sell dated 25.06.2010 and its cancellation and, therefore, plaintiff moved an application for permission to amend the plaint. The application has been rejected by the learned trial Court on the ground that the application has been filed at a belated stage and the plaintiff failed to file replication.

I have heard learned counsel for the parties at length and with their able assistance gone through the impugned order passed.

Existence of the agreement to sell dated 25.06.2010 is not in dispute. It is the defendant who has pleaded that there was another agreement dated 25.06.2010. Plaintiff is also not disputing this fact. Plaintiff, however, pleads that the aforesaid agreement dated 25.06.2010 was cancelled and he should be permitted to amend the pleadings so as to incorporate necessary assertions.

No doubt, the application was filed at a belated stage. However, the proviso to Order 6 Rule 17 CPC permits allowing of the amendment, if the party is able to show justifiable cause for seeking amendment at that stage. Here is a case where execution of the agreement to sell dated 25.06.2010 is not in dispute. Only pleadings which the

plaintiff wants to add is that the aforesaid agreement to sell has been cancelled and, therefore, the new agreement to sell was executed.

In the considered opinion of this Court, such amendment would help the Court in adjudicate upon the dispute in a proper manner.

In view thereof, the application for amendment is allowed and the impugned order is set aside. The plaintiff is directed to file the amended plaint.

Since, the trial of the suit is pending for the last 4 years, the trial court is requested to make a sincere endeavour to adjudicate upon the suit itself within a period of 9 months from today.

The civil revision is allowed.

January 25, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No