

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8441 of 2016 (O&M)

Date of Decision: March 28, 2018

Vishnu Bhagwan Mangla

...Petitioner

Versus

Shanti & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Pankaj Jain, Advocate,
for the petitioner.

Mr.Rajesh Arora, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision is directed at the instance of the petitioner-plaintiff against the impugned order dated 1.11.2016 (Annexure P-6), whereby the application for amendment of the plaint seeking specific performance of the agreement to sell dated 8.9.2012, had been dismissed.

Mr.Pankaj Jain, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the aforementioned suit was filed for seeking specific performance of the agreement, *ibid*, but due to inadvertence, the claim of alternative relief of recovery of ₹60,60,600/- with up to date interest as per the provisions of clause (1) (b) of Section 22 of the Specific Relief Act, 1963 with the proviso appended to Section 22 with alternative relief of permanent injunction could not be incorporated. The amendment would not alter and change the nature of the suit, but it is in accordance with the provisions of the Statute as error had crept on account of some inadvertence, which was beyond the control. The application was submitted at the stage when the suit was at the initial stage and the plaintiff has yet to lead evidence. No prejudice and harm would be caused as the

agreement was though admitted but stated to have been cancelled. The cancellation notice is also to be challenged by seeking declaration in view of the judgment rendered by the Hon'ble Supreme Court in **I.S.Sikandar by L.Rs Versus K.Subramani and others, 2014 (1) RCR (Civil) 236**. The other party can always be compensated in terms of costs, for, it shall be at liberty to cross-examine the witnesses of the plaintiff on all counts and, thus, urged this Court for setting-aside the findings.

Mr.Rajesh Arora, learned counsel for the respondent-defendants submitted that the petitioner-plaintiff had been lingering on the matter. The amendment is hit by Order 2 Rule 2 CPC as the aforementioned relief had been willfully omitted and cannot be permitted to be incorporated. Even the relief of recovery is beyond limitation in view of the provisions of Section 21 of the Limitation Act and, thus, urged this Court for upholding the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

The suit aforementioned was filed in 2013, whereas the stipulated date for registration and execution of the sale deed, as per the averments in the plaint, was 9.1.2013. The application for amendment was submitted on 1.3.2016 and the issues were framed on 23.8.2014. Though, in the suit for specific performance, alternative relief as per the statutory provisions of the Act, *ibid*, were required to be incorporated, but the same was not sought owing to the reasons given in the application, which, in my view, fall within the expression “inadvertence” and for that, the party cannot be made to suffer.

It was a categoric stand of the defendants in the written

statement that the agreement had been cancelled by a specific notice realising that the plaintiff may not have been confronted with the maintainability of the suit of not seeking declaration with regard to the cancellation in view of the law laid down in **I.S.Sikandar** (supra). The aforementioned relief of declaration and consequential relief of injunction was also sought. The Court below, in my view, ought to have permitted the petitioner-plaintiff to amend the suit as there were certain legal impediments, which the petitioner would have faced at the fag-end of the trial, particularly the defendants would be at liberty to file the amended written statement and cross-examine the witnesses on that count.

It is also a matter of record that the onus in such suits keeps on shifting and the parties would be discharging in support of their pleadings. I am of the view that the impugned order does not suffice the requirement of aforementioned provisions of law as noticed above and, therefore, is not sustainable in the eyes of law.

For the reasons stated above, the impugned order is set-aside. The application for amendment is allowed subject to payment of ₹10,000/- as costs, to be paid to the counsel for the defendants in the High Court. The amended written statement be filed within 15 days from the receipt of certified copy of this order and amended replication, if any, within another 15 days, whereas the Court may make an endeavor to expedite the trial and shall ensure that none of the parties seek unnecessary adjournments.

Revision petition stands allowed.

March 28, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No