

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8715 of 2017
Date of Decision-31.07.2018

Vijay Kumar ... Petitioner
Versus
Madan Lal ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Budhwar, Advocate
for the petitioner.

Mr. V.B. Aggarwal Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 04.10.2017 passed by Additional Civil Judge (Senior Division), Kurukshetra vide which application under Order 6 Rule 17 CPC filed by the respondent was allowed.

[2]. A suit for declaration and possession by way of specific performance of agreement to sell with consequential relief of permanent injunction was filed by the plaintiff/respondent. An application under Order 6 Rule 17 CPC was filed by the plaintiff/respondent to the effect that the plaintiff wants to give up his main relief of specific performance by maintaining the alternative relief of refund of earnest money along with interest and damages. The suit was filed on the basis of agreement to sell on 25.04.2016.

[3]. In the application for amendment of plaint, the plaintiff/respondent pleaded that copy of *jamabandi* for the year 2010-11 was obtained by him on 18.04.2016 from where it was revealed that the property in question is still lying mortgaged with Punjab National Bank and the same has not been redeemed so far. It was the duty of the defendant to get the mortgage redeemed before execution of the sale deed. In para No.5 of the plaint, following pleadings were made:-

“5. That instead of taking No Dues Certificate from the Bank and required permission of the Director Town and Country Planning Haryana for execution and registration of the sale deed of the suit land in favour of the plaintiff and other persons as desired by the plaintiff, the defendant had got issued a notice dated 15.05.2013 to the plaintiff through his counsel calling upon the plaintiff to remain present in the office of Sub-Registrar, Thanesar on 31.05.2013 for getting execution of sale deed, however, plaintiff along with other person in whose favour sale deed is to be executed were remain present in the office of Sub-Registrar, Thanesar along with balance sale consideration and expenses for stamps and registration. At that time also, the defendant did not come present and had not obtained necessary No Dues Certificate from the Bank and required permission from the District Town Planner, Kurukshetra and ultimately, the plaintiff got his attendance marked in the office of Sub-Registrar, Thanesar by getting his affidavit attested.

[4]. Defendant/petitioner did not allege that he had applied for getting the permission from the District Town Planner for selling the land as required under Section 7-A of The Haryana

Development and Regulation of Urban Area Act, 1975. In para No.7 of the plaint, plaintiff has pleaded his readiness and willingness to perform his part of obligation. Defendant did not disclose whether any khasra numbers out of the joint khewat are in possession of the defendant for putting the plaintiff in possession at the spot without getting the land partitioned.

[5]. The suit was in respect of 18 kanal, 8 marla, 8 sarsai of land @ of Rs.1,94,00,000/- per acre. An amount of Rs.1 crore was paid as earnest money on 01.05.2012 at the time of execution of agreement to sell dated 01.05.2012. Target date for registration of sale deed was fixed as 30.04.2013. The land was to be redeemed from the bank with whom the same was lying mortgaged by the defendant. The pleadings were made by the plaintiff that he was always ready and willing to perform his part of contract and he remained present in the office of Sub-Registrar on the target date with balance sale consideration. Defendant did not turn up, nor the required permission in the form of 'No Due Certificate' was obtained. The sale deed could not be executed. Defendant issued a notice dated 08.08.2013 through his counsel cancelling agreement to sell and forfeiture of the earnest money of Rs.1 crore in favour of the defendant. The said notice was replied on 17.08.2013 and defendant was asked to get 'No Due Certificate' from the bank and permission from the District Town Planner, Kurukshetra. The suit was filed on 25.04.2016.

[6]. Defendant appeared in the suit and filed an application

on 08.07.2016 by calling the plaintiff to pay the balance sale consideration of Rs.3,47,27,800/- and to get the sale deed executed as per agreement to sell. Defendant failed to obtain 'No Due Certificate' from Punjab National Bank. NOC was not obtained from the competent authority.

[7]. The stand of the defendant to obtain necessary documents to be of the plaintiff and resultant effect would be seen at the time of final adjudication of the *lis*. A party can always abandon any part of the claim. It is a settled principle of law that all *bona fide* amendments should be allowed. The effect of the amendment would be seen at the time of conclusion of the trial. The indulgence granted by the trial Court for waiving part of the claim and restricting the claim to alternative relief is not going to change the nature of the suit in any manner. The breach of agreement/contract would be the subject matter of consideration which would be answered by the trial Court at the appropriate stage. The amendment in the plaint would not change any such cause of action as incorporated in the suit. The lesser relief can always be granted by the Court on the basis of evidence on record. The suit itself is at the initial stage.

[8]. In my considered opinion, impugned order dated 04.10.2017 passed by Additional Civil Judge (Senior Division), Kurukshetra does not suffer from any patent error of jurisdiction

or perversity of any kind. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

31.07.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No