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

**Civil Revision No.1313 of 2015
Date of Decision: 19.03.2019**

RAO SHAILENDER SINGH

.....Petitioner

Vs

M/S RAITANI BUILDCON PVT LTD

....Respondent

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

Present: Mr. Pankaj Jain, Advocate and
Mr. Puneet Bansal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 23.01.2015 passed by the Addl. District Judge, Gurgaon (now Gurugram), vide which amendment of plaint at the appellate stage was dismissed.

[2]. Plaintiff/petitioner filed a suit for specific performance of agreement to sell dated 01.04.2005. Trial Court decreed the suit for alternative relief of refund of money vide judgment and decree dated 23.12.2013. Feeling aggrieved against the said judgment and decree, the plaintiff/appellant filed first appeal

before the lower Appellate Court.

[3]. It is relevant to mention here that the Hon'ble Apex Court decided the case titled **I.S. Sikandar (D) By LRs. vs. K. Subramani and others, 2014(1) R.C.R. (Civil) 236** vide judgment dated 29.08.2013, wherein it was decided that notice of cancellation of agreement to sell is to be challenged by the plaintiff in the suit itself.

[4]. The suit was decided on 23.12.2013 by the trial Court and appeal was filed on 17.01.2014. The application for amendment of plaint at belated stage came to be filed on 11.11.2014. The application for amendment has been declined by the lower Appellate Court on the premise that the proposed pleadings at the appellate stage would be contrary to the proviso of Order 6 Rule 17 CPC.

[5]. Learned counsel for the petitioner by referring to Section 22 of the Specific Relief Act submitted that the provision of the said Act is *de hors* the provisions of Civil Procedure Code as the plaintiff at any stage of the proceedings can claim the relief which he omitted so at the time of filing of the suit.

[6]. It is settled principle of law that all *bona fide* amendments are to be allowed irrespective of the stage of the litigation. Reference can be made to **State of Maharashtra vs. Hindustan Construction Company Ltd., 2010 AIR (SC) 1299.**

The requirement of challenging notice was not common before the judgment rendered by the Hon'ble Apex Court in **I.S. Sikandar (dead) By LR's** case (supra). The filing of application in respect of cause of action on 11.11.2014 cannot be commented upon, at this stage keeping in view the filing of appeal before the lower Appellate Court on 17.01.2014.

[7]. The apprehension raised by learned counsel for the respondent that the amendment would result in *de novo* trial is totally unfounded inasmuch as that the parties had already led evidence before the trial Court. The petitioner would confine his prayer only to the extent of incorporating the challenge to the notice dated 06.09.2005 in the plaint and would not lead any evidence at the appellate stage.

[8]. Law of amendment is to be liberally construed unless and until irreparable loss is caused to the opposite party which cannot be compensated in terms of costs. In the present situation, the imposition of costs can be a panacea for the intended action on behalf of the petitioner.

[9]. In view of above, this revision petitioner is allowed. Impugned order dated 23.01.2015 passed by the Addl. District Judge, Gurgaon (now Gurugram) is set aside, however subject to payment of costs of Rs.20,000/- to be deposited with the District Legal Services Authority, Gurugram.

[10]. Payment of costs shall be the condition precedent for granting indulgence by the appellate Court in the aforesaid context.

March 19, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No