

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

Sr. No.204

CR No.3562 of 2018 (O&M)

Date of decision: 25.09.2019

Sneh Lata and another

....Petitioners

versus

Birmati Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Suman Jain, Advocate
for the petitioners.

Mr. S.S. Dinarpur, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 13.04.2018 passed by the Additional District Judge, Hisar (for short – the Appellate Court) dismissing an application filed by the petitioners through which they had sought framing of an additional issue at the appellate stage.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioners filed a suit seeking therein to recover from the respondents an amount of ₹1,00,00,000/- alongwith interest @ 12% per annum from the date of filing of suit till final realization. In the alternative suit for possession by way of specific performance of the agreement to sell dated 29.08.2005 in respect of the land measuring 63 kanals 11 marlas detailed and described in the head

note of the plaint (for short – the suit property) was sought. Permanent injunction to restrain the respondents from alienating the suit property was also prayed for.

On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and contested the petitioners' claim.

The grounds on which the petitioners had filed the suit as also the grounds on which the respondents had defended their case being not material are not being referred to.

The Trial Court after sifting the evidence which had come on record through judgment and decree dated 29.11.2014, found the petitioners entitled to refund of earnest money amounting to ₹33.34 lakhs.

Being aggrieved by the judgment and decree of the Trial Court, the petitioners filed an appeal before the Appellate Court. During the pendency of the appeal, the petitioners filed an application before the Appellate Court seeking therein framing of an additional issue with regard to their alternate prayer. Such application was dismissed by the Appellate Court through the order under challenge in the present proceedings.

Learned counsel for the parties have been heard.

It is not disputed that the alternate prayer made by the petitioners in their suit was for the grant of possession of the suit property by way of specific performance of agreement to sell dated 29.08.2005. That being so, an issue with regard to such alternate relief should have been framed even at the appellate stage especially when it is admitted by both the parties that they would not lead any fresh evidence in this regard and that the petitioners shall be held entitled to the alternate relief only if they are

not held entitled to the main relief sought for by them.

In the light of the above observations, the impugned order is set aside and the Appellate Court is directed to frame an additional issue in terms of the present order and dispose of the petitioners' appeal within three months.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 25, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No