

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5300 of 2017(O&M)

Date of decision : 01.05.2019

Vinita Chaudhary

..... Petitioner

versus

M/s RealGold Builders and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Rajesh Lamba, Advocate for the petitioner.

Mr.Sudhir Aggarwal, Advocate for respondent No.2.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application for amendment of the plaint from converting the suit of injunction to specific performance of the agreement to sell dated 04.07.2012 has been dismissed.

Mr.Rajesh Lamba, learned counsel appearing on behalf of the petitioner submitted that at the time when the suit for injunction on 13.12.2013 was filed there was no breach at the instance of the defendants. It is only when defendants started raising construction that the cause of action accrued and, therefore, the application under Order 6 Rule 17 CPC dated 20.01.2016 was filed which has been erroneously declined. The objection of maintainability can always be kept open and decided but as per the pleadings as of now the plea of it being beyond limitation would not come into play. The question of adjudication can be kept open for evidence at final stage. The suit was slated for plaintiff's evidence.

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of

the respondent submitted that the agreement to sell is dated 04.07.2012 whereas the stipulated date was 30.03.2013. The suit for injunction was filed on 13.12.2013. The amendment has been sought after three years. The objection of Order 2 Rule 2 CPC as well as of limitation would be there but the amendment at the drop of the hat should not be permitted as no explanation has come forth for not filing the suit for specific performance in the first instance and urged this court for dismissal of the revision petition.

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

The facts aforementioned are not in dispute. Since the suit is slated for evidence the objections qua Order 2 Rule 2 CPC as well as limitation can always be urged and raised and their onus would be on the defendants. In case of any such application or submission the trial Court is enjoined an obligation to frame issues. Thus, the aforementioned objections are ordered to be kept open to be decided by the trial Court at final stage but at the same time the application for amendment cannot be outrightly rejected. The pleadings have to be proved vis-a-vis the evidence.

The revision petition is allowed and the order under challenge is hereby set aside but subject to payment of Rs. 5000/- as costs. However, it is made clear that any observation made by this Court will not be construed as an expression of opinion on the merits of the case.

(AMIT RAWAL)
JUDGE

01.05.2019
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No