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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.663 of 2019

Date of Decision: 31.01.2019

Navjyoti Overseas Private Limited and another

..... Petitioners

Versus

Naresh Kumar (Since Deceased) Th. His LRs. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Munish Gupta, Advocate,
for the petitioners.

SUDIP AHLUWALIA, J. (ORAL)

The present revision is directed against the order passed by the Ld. Civil Judge (Junior Division), Sonapat, on 20.11.2018, vide which the application for Amendment of the Plaint under Order 6 Rule 17 read with Section 151 of the CPC, dated 18.05.2018, filed on behalf of the petitioners/plaintiffs was dismissed.

2. It may be mentioned that the concerned Suit being CIS No.5619 of 2013 was filed on behalf of the petitioners in which they had initially prayed for a Decree of Permanent Injunction to restrain the defendants/respondents and others, claiming through them from interfering in the peaceful possession of the petitioners over the disputed property, which the plaintiffs/petitioners had claimed to have acquired by way of an oral Agreement between the parties. The Suit, as already noted, had been

filed in the year 2013 and the application for Amendment was brought five years later, whereby the Suit was sought to be converted into one with a prayer for Specific Performance of the aforesaid oral Agreement between the parties. The Ld. Court below dismissed the petitioners' application by, *inter alia*, recording the following observations:

“ x -- x -- x -- x

7. *I have heard and considered that argument advanced by learned counsel for parties and gone through the case file very carefully and minutely. The plaintiff/applicant has filed present application for amendment seeking relief to change nature of suit from permanent injunction to specific performance of agreement to sell but the same does not hold water. The applicant/plaintiff itself mentioned about alleged oral agreement to sell dated 12.05.2008 already in notice and knowledge of plaintiff but they have not filed present application within stipulated period of limitation as it is well settled proposition of law that suit for specific performance shall be deemed to have been instituted when application for amendment of plaint to claim the said relief was moved. It is held by our own the Hon'ble Punjab & Haryana High Court in **Gian Chand versus Bimal Kumar 2012 (55) R.C.R. (Civil) 535 P & H** that “when it is evident from the averments of plaintiff himself that suit to claim relief of specific performance had hopelessly become barred by limitation, when amendment application was moved, the amendment cannot be allowed so as to leave the question of limitation to be adjudicated upon after amendment of plaint and after trial of the suit. Hence, proposed amendment of plaint has been rightly declined by trial Court.”*

8. *Before parting with order, it is apposite to mention that applicant/plaintiff has taken placed reliance upon impugned allegedly executed between plaintiff with deceased Naresh but alleged MOU was executed on 06.03.2007 through GPA dated 20.12.2007. However, the executor was no more on 06.03.2007. The plaintiff has failed to putforth any plausible explanation for its contradiction with date of MOU and GPA. So, there is merit in the contention of learned defence counsel that applicant/plaintiff has malafide intention to change nature of suit even after having reason to believe that alleged oral agreement to sell was in his its notice and knowledge but plaintiff did not turn up within limitation period of 3 days ended on 05.07.2010, in case alleged cause of action accrued on 06.03.2007 as per impugned MOU. Hence, no good reason is made out to allowed the application which is hereby **dismissed** in the interest of justice.”*

3. It is, however, contended on behalf of the petitioners that in view of the decision of the Supreme Court in “**Prithi Pal Singh V. Amrik Singh**”, **2014(1) ICC 690**, while dismissing the Amendment application, concerned Court below ought not to go into examination of the merits of the new averments sought to be incorporated. Specific reliance has been made on the conclusions mentioned in Para No.11 of the aforesaid Citation which are set out as below:

“ x -- x -- x -- x

11. *From the ratio of the aforesaid judgments, following points emerge:*

(a) *Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;*

(b) The dominant purpose of the amendment is to minimise the litigation;

(c) The amendment once allowed and incorporated relates back to the date of the initial institution of the suit;

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.”

4. In addition, another decision of the Supreme Court in **“Sampath Kumar V. Ayyakannu”, 2002(4) ALL MR 866** has also been cited, in which it was held that in a Suit for injunction, if a ground is taken that possession has been taken illegally during pendency, the plaintiff inspite of being entitled and to file a fresh Suit is nevertheless also entitled to claim relief by way of amendment to convert the Suit from that of injunction into one for possession, so as to curtail multiplicity of proceedings.

5. The position of law in the light of the aforesaid two Citations of the petitioners is undisputed. It is, however, found to be not applicable to the peculiar facts and circumstances of the present case, in which the plaintiffs/petitioners have sought to incorporate the relief for Specific Performance during pendency of the Suit, without specifying as to when their cause of action to accrue such relief arose, whether it was before or after filing of the Suit. Undoubtedly, the Suit had already become five years old when the proposed amendment was sought for. In the absence of any description to when the plaintiffs/petitioners came to realise that the defendants were not willing to perform their part of the obligation in

transferring title of the disputed property to the plaintiffs, it would be difficult to determine whether the subject matter of the proposed amendment was within the knowledge of the plaintiffs before filing the Suit or otherwise.

6. In view of the alleged Agreement relied upon by the petitioners which was eleven years old in point of time when the proposed amendment was sought for, and it was not even explained as to when and how the cause of action to seek the Specific Performance had accrued to the plaintiffs/petitioners during the pendency of the Suit, the Ld. Court below was eminently justified in dismissing the same by relying upon the decision of this Court in **Gian Chand** (supra) as mentioned in Para No.7 of the impugned order above.

7. No merits.

8. Dismissed.

31.01.2019

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No