

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

212

CR No.910 of 2016

Date of Decision: November 18, 2019

Rajesh Gupta and others

.....Petitioner(s)

versus

Gagandeep Singh and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SANJAY KUMAR:

Present: Mr.S.K. Jain, Advocate for the petitioners.

Mr. Gurcharan Dass, Advocate
for respondents No.2 and 3.

SANJAY KUMAR, J. (Oral)

The petitioners in this revision are the plaintiffs in Civil Suit No.114 of 30.09.2010 on the file of the learned Additional Civil Judge (Senior Division), Dera Bassi (hereinafter, 'the trial Court').

2. The said suit was filed by them for specific performance of the contract of sale dated 19.01.2006 and writing dated 10.08.2006. This agreement pertained to an extent of land admeasuring 3 kanals 16 marlas situated in Village Lohgarh NAC Zirakpur, Tehsil Dera Bassi, District SAS Nagar (Mohali). They filed an application in the said suit under Order 6 Rule 17 CPC seeking amendment of their suit prayer. By way of the said amendment application, the petitioners/plaintiffs wanted to include an alternative prayer for recovery of the sum of ₹ 1,64,00,000/-, being double the earnest money of ₹ 82,00,000/- paid under the suit agreement, in the event

Court dismissed the application. Aggrieved thereby, they are before this Court.

3. By order dated 08.02.2016 passed in this revision, this Court granted interim stay of trial of the suit.

4. Perusal of the order under revision reflects that the trial Court took note of the fact that the trial in the suit had commenced and adverted to the provisions of the Proviso to Order 6 Rule 17 CPC and held against the plaintiffs. No reference was made by the trial Court to the provisions of Section 22 of the Specific Relief Act, 1963 (hereinafter, 'the Act of 1963'). Section 22 of the Act of 1963 specifically provides that any person who prays for specific performance of a contract may also ask for any other relief to which he may be entitled, including refund of any earnest money or deposit made by him in case his claim for specific performance is refused. Section 22(2) provides that no relief should be granted by the Court as stated supra unless it is specifically claimed. However, the Proviso to Section 22(2) states that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceedings, allow him to amend the plaint, on such terms as may be deemed fit for including a claim for such relief. It is well settled that a person suing for specific performance may advance such an alternative plea, in terms of Section 22(2) of the Act of 1963, even at the stage of appeal. Further, even if such an alternative plea is advanced, it would be for the Court to examine the same, if warranted, on its own merits and on the strength of the individual facts of that case.

5. The trial Court therefore ought not to have gone by the provisions of Order 6 Rule 17 alone, ignoring the mandate of Section 22 of the Act of 1963. In consequence, the order under revision denying the plaintiffs the opportunity of advancing such an alternative plea cannot be countenanced.

(Senior Division), Dera Bassi, is accordingly set aside. The amendment application filed by the plaintiffs stands allowed, permitting them to raise the alternative plea as prayed for. The trial Court shall consider the same on its own merits, if warranted, at the relevant point of time.

6. No orders as to costs.

November 18, 2019
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[SANJAY KUMAR]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes/No