

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 217

CR-928-2015

Date of decision : 07.05.2019

Madan Lal

..... Petitioner

VERSUS

Dharam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A. P. Bhandari, Advocate, for the petitioner.

Mr. Suman Jain, Advocate, for respondents No. 6 and 8.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 06.12.2014, passed by the Additional Civil Judge (Senior Division), Hodal (for short, the Trial Court), dismissing an application filed by the petitioner under Order 6 Rule 17 CPC through which he had sought amendment of his plaint.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein specific performance of agreement to sell dated 25.11.2005. Consequential relief of prohibitory injunction and in the alternative recovery of ₹63,82,125/- alongwith @ 24% per annum was also sought. On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and filed their written statement through which they refuted the petitioner's claim. Thereafter, the Trial Court framed the issues on which both parties led their respective evidence. When the matter reached the stage of final arguments, the petitioner filed an application under Order 6 Rule 17 CPC seeking therein to amend the prayer made by him in his suit to include therein a challenge to the legal notice dated 03.08.2006 sent to the petitioner on behalf of the respondents. It was submitted by the petitioner that such amendment was

necessary in view of the law laid down by the Hon'ble Apex Court in "*I. S. Sikandar (D) by LRs vs. K. Subramani and others*" (2013) 15 SCC 27, wherein it was held that in a suit for specific performance the plaintiff is also required to challenge the termination of the agreement to sell. The Trial Court dismissed the petitioner's application through the order under challenge in the present proceedings.

Learned counsel for the petitioner submits that the petitioner in his plaint has clearly referred to the legal notice dated 03.08.2006 through which the respondents had sought to terminate the agreement to sell in question. He had termed the same to be illegal, arbitrary and not binding on his rights. However, a formal challenge to the same had not been made which he intended to do so through the sought amendment. He further submits that even if the proposed amendment is allowed, the petitioner would not lead any further evidence. In support of his contentions, learned counsel for the petitioner places reliance on the following judgments of this Court: -

1. CR-1169-2017 "*Ashok Kumar Batta vs Sharanjit Kaur and others*", decided on 20.04.2018; and
2. CR-6612-2014 "*Sharwan Kumar Mittal vs Smt. Vibha Goel and others*", decided on 29.04.2015.

None has appeared on behalf of respondents No. 2 to 5.

Learned counsel for contesting respondents No. 6 and 8 submits that he has gone through the aforesaid judgment of this Court in *Ashok Kumar Batta's* case (surpa) and has no objection if the present petition is disposed of in the same terms.

A perusal of the plaint shows that the petitioner/plaintiff has clearly pleaded therein that a legal notice dated 03.08.2006 was sent to him on behalf of the respondents through which they had sought to terminate the agreement to

sell in question. In his plaint the petitioner has termed the said legal notice as illegal and arbitrary. However, there was no formal challenge to the said legal notice in the prayer clause of his plant which he intends to do through the proposed amendment.

Learned counsel for the petitioner undertakes that the petitioner shall not lead any further evidence than what has already been led by him.

In view of the above facts and because learned counsel for contesting respondents No. 6 and 8 has no objection if the prayer made by the petitioner is allowed in terms of the judgment of this Court *Ashok Kumar Batta's* case (surpa) as also for the reason that learned counsel for the petitioner has specifically stated that if the proposed amendment is allowed, the petitioner would not lead any further evidence, after setting aside the impugned order, the proposed amendment sought by the petitioner is allowed. However, the same is subject to any objection that the respondents may raise to the amendment in their amended written statement which may be filed by them to the amended plaint as also to any evidence that they may lead in pursuance to such objection.

The present petition is allowed in the above terms.

The Trial Court shall make every endeavour to dispose of the petitioner's suit within six months from the date of receipt of a certified copy of this order.

07.05.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No