

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

**CM No. 4359-CII of 2019 in/and
CR No. 1068 of 2019 (O&M)
DECIDED ON: APRIL 29, 2019**

CHATTAR SINGH PUNIA

.....PETITIONER

VERSUS

SUKHA SINGH AND OTHERS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. C.B. Goel, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for the respondents.

AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been preferred against the order dated 30.01.2019 passed by Civil Judge (Sr. Division), kaithal (hereinafter referred to as 'Civil Court') dismissing the application filed under Order XIV Rule 3 and 5 of the Code of Civil Procedure, 1908 (for short 'the Code').

The facts as pleaded are that petitioner-plaintiff entered into agreement to sell dated 12.03.2011 to purchase the suit property from the respondents-defendants. In pursuance of the agreement to sell dated

12.03.2011, petitioner-plaintiff paid a sum of ₹15,00,000/- to the respondents-defendants.

There was dispute between the parties with regard to fulfillment of certain clauses of agreement to sell by defendants/respondents. The petitioner-plaintiff filed a suit for recovery of ₹20,85,000/- along-with future and *pendente lite* interest or in alternate for specific performance of agreement to sell dated 12.03.2011 was filed in the year 2013. On notice, written statement was filed by the respondents-defendants and issues were framed in the year 2016. The evidence of petitioner-plaintiff and respondents-defendants were concluded in April 2017. The matter was fixed for rebuttal evidence, at that time an application under Order XIV Rule 3 and 5 of the Code for framing additional issue was filed. It would be pertinent to note here that the Civil Court framed the following issues:

- “(i) *Whether the plaintiff is entitled to a decree of recovery of ₹20,85,000/- or decree for specific performance of agreement to sell dated 12.03.2011 as sought for?OPP.*
- (ii) *Whether the plaintiff remain and is still and ready and willing to perform his part of agreement?OPP.*
- (iii) *Whether the suit of the plaintiff is not maintainable?OPP.*
- (iv) *Relief.”*

In the application the petitioner-plaintiff prayed for framing of following issue:

“2-A Whether in view of agreement in question, the defendants have constructed roads/streets/sewerage and water supply lines in the locality/suit land on or before 25.08.2011?OPD.”

The said application was dismissed by the Civil Court, hence, the present civil revision petition.

Learned counsel for the petitioner argues that it is the suit filed by the petitioner/plaintiff and the Civil Court erred in dismissing the application by saying that it is a dilatory tactic adopted by the petitioner/plaintiff to prolong the trial. The contention raised by learned counsel for the petitioner/plaintiff is that it is the suit filed by him and he stands to gain nothing by delaying the suit.

Learned counsel for the respondents/defendants argues that issue No.1 framed by the Civil Court is wide enough and would cover the additional issue now so proposed by the petitioner/plaintiff.

For reference, Order XIV Rule 5 of the Code is reproduced below:

“5. Power to amend and strike out issues

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

Rule 5 empowers the court for adding additional issues as may be necessary for determining the matters in controversy between the parties.

The case projected by the petitioner/plaintiff is that as the respondents/defendants failed to honour the clauses of the agreement to sell, the petitioner/plaintiff is entitled to recover the amount paid by him to the respondents/defendants. Issue No.1 framed by the Civil Court i.e. “*Whether the*

plaintiff is entitled to a decree of recovery of ₹20,85,000/- or decree for specific performance of agreement to sell dated 12.03.2011 as sought for?" is broadly worded and takes within its ambit additional issue now proposed to be framed. The case is fixed for rebuttal since April 2017 and the application under Order XIV Rule 3 and 5 of the Code seeking framing of additional issue was moved on 28.01.2019 whereas the issues were framed way back in 2016. The endeavour of the petitioner is to shift the onus on respondents by framing additional issue.

No interference is called for in the impugned order. The petition is dismissed.

APRIL 29, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*