

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

CR-8281-2016 (O&M)
Date of decision : 04.02.2020

Santo

...Petitioner

Versus

Ellora Hitech Infra Venture Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate for the petitioner.

Mr. J.K. Chauhan, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant-petitioner has filed the present revision petition against the order passed by the learned trial Court, permitting the plaintiff to amend the plaint so as to include declaration to the effect that cancellation of the agreement to sell by virtue of legal notice dated 26.03.2012, is illegal.

The aforesaid application for amendment was filed in a suit for specific performance of the agreement to sell. The aforesaid amendment has been filed, on account of a judgment passed by Hon'ble the Supreme Court in the case of **I.S. Sikandar (D) by LRs Vs. K. Subramani and others, (2013) 15 SCC 27.**

Learned counsel for the defendant-petitioner submits that such declaration sought is barred by time as notice cancelling the agreement to sell was served on the plaintiff in the month of March, 2012 and, therefore,

without seeking declaration that such cancellation of the agreement to sell is illegal, the suit for specific performance could not be maintained. Hence, he submits that since the application for permission to amend the plaint was filed beyond time, therefore, it should not have been allowed.

This Court has considered the submissions. However, find no substance therein. Once, the plaintiff has sought relief of specific performance of agreement to sell, the failure to seek declaration with regard to unilateral notice issued by the defendant, would not result in defeating the rights of the plaintiff. In any case, the application for amendment, for the reasons stated by the Civil Judge, has been allowed.

As regards objection of the defendant-petitioner with regard to such amendment being beyond time, can very well be examined by the Court while deciding the suit finally. The petitioner shall be at liberty to request the Court to frame distinct issue on the aforesaid aspect. Learned trial Court would decide the aforesaid objection uninfluenced by the order passed by the Civil Judge (Junior Division) on 20.09.2016, and not being interfered with, by this Court.

In view of the above, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

04.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No