

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

CR-5335-2018

Date of decision: 05.04.2022

Rajender

.....Petitioner

versus

Shimla and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

In spite of due service, none has put in appearance on behalf of the contesting respondents.

Let the arguments be heard.

The present revision by revisionist-Rajender Singh challenging an order dated 09.07.2018 (Annexure P-8), whereby, an application moved by the present revisionist, then plaintiff, for amendment of the plaint, stood dismissed by the Court of learned Additional Civil Judge (Senior Division), Ganaur vide order dated 09.07.2018.

Heard counsel for the petitioner and perused the records.

The plaintiff had filed a suit for declaration, for possession by way of specific performance of a contract agreement dated 08.03.2006. At the trial, the applicant moved an application under Order 6 Rule 17 of CPC for amendment of the plaint which was to enable him to incorporate in the alternate relief for recovery of earnest money amounting to Rs.3 lakh along with interest, which application stood dismissed.

Heard counsel for the petitioner and perused the records.

Precisely, the suit in question is broadly speaking, one for specific performance of the contract and the amendment that is being sought to be incorporated is by way of alternate relief seeking refund of the earnest money along with interest. Section 22 of the Specific Relief Act is reproduced as below to lay emphasis:-

“22. Power to grant relief for possession, partition, refund of earnest money, etc. (1)
Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 3 [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of Sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21.”

and the prayer of the petitioner certainly falls within the ambit of Section 22 (1) (b) of the Specific Relief Act. More so, under Order 7 Rule 7 of CPC provides that such an amendment which is necessitated cannot be overlooked and there is no such bar for grant of alternate relief even if there is a relief being sought in terms of Section 20 of the Specific Relief Act by way of discretionary relief. This Court seeks support from the judgments titled as 'Ram Niwas versus Bramchari and others' 2009 (3) PLR 716; 'Deewan Singh versus Ramniwas and others' 2015 (4) M.P.L.J. 172; 'Isham Singh (since deceased) through L.Rs. versus

Isham Singh' 2019 (1) PLR 137 and 'Ajendraprasadji N. Pande and another versus Swami Keshavprakeshdasji N. and others' 2007 (1) R.C.R. (Civil) 481 which facts are akin to the case before this Court.

The learned Court below has fell into an error by holding that since the amendment application has been moved and the relief sought during the course of trial and the circumstances of the case shows that there has been no exercise of due diligence by the applicant and has dismissed the application is certainly misinterpretation of the provisions of the Statutes.

In light of the foregoing discussions and reasons detailed, the impugned order is bad in law, being illegal and unsustainable is set aside by way of acceptance of the instant revision.

The present petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

05.04.2022

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No