

**204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-8142-2018(O&M)****Decided on: May 12, 2022****Surjit Singh (since deceased through L.Rs) and another****.....Petitioners****Vs.****Smt. Surjit Kaur and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Puneet Sharma, Advocate
for the petitioners.

Mr. Rishav Jain, Advocate for
Mr. Jaspreet Singh, Advocate
for the respondents.

Pankaj Jain, J (Oral)

By way of present revision petition preferred under Article 227 of the Consitution of India the petitioner-plaintiff impugns herein order dated 8.8.2018(Annexure P-5) whereby his application seeking amendment of the plaint has been rejected. The suit seeking specific performance of the agreement to sell dated 6.1.2009 was filed on 3.9.2012. The issues were framed. It is at the time of leading evidence that the plaintiff-petitioner has filed application seeking amendment of the plaint to following effect:-

“The following lines be allowed to be incorporated prior to the existing head note of the plaint:

“Suit for declaration that the cancellation of the agreement to sell dated 7.09.2009 and the forfeiture of the earnest money amounting to Rs.40,00,000/- (Rs.Forty Lakhs only) by the defendants vide notice dated 14.09.2009 is illegal, null and void, inoperative, ultra vires and is not binding on the rights of the plaintiffs.”

(b) The plaintiff also wants to introduce Para No.4-A in the plaint which will read as under:

4-A “That defendants instead of executing the Sale Deed in accordance with agreement to sell dated 07.09.2009, cancelled the same and forfeited the earnest money amounting to Rs.40,00,000/- (Rs. Forty Lakhs only) by serving false and illegal notice dated 14.09.2009. The cancellation of the agreement and forfeiture of earnest money by the defendants is absolutely illegal. Defendants had no right or authority to cancel the agreement and to usurp the earnest money. Plaintiffs are not bound by the unilateral act of the defendants of canceling the agreement and usurping the earnest money.”

The application was contested. The trial court dismissed the application filed by the petitioner primarily on the ground that since the plaintiff-petitioner is seeking amendment to incorporate the relief of declaration to the effect that the notice dated 14.9.2009 is illegal, null and void, thus, on the day when the application for amendment for incorporating the relief of declaration has been filed i.e. on 27.11.2017 the said relief will be barred by time while relying upon Article 58 of the Limitation Act, 1963.

Mr. Puneet Sharma, Advocate appearing on behalf of the petitioners would submit that the application for amendment ought not have been dismissed merely on the ground of limitation as the limitation will at the end of the day remain a debatable question which requires issue to be framed. He further submits that amendment thus itself cannot be refused on the ground of limitation. In support of his contention he relies upon the judgment in **Puran Ram Vs. Bhaguram and another (2008) 2 RCR (Civil) 499**.

Per contra Mr. Rishav Jain, Advocate appearing on behalf of the respondents submits that an application was filed seeking amendment of

the plaint which was allowed. So far as the present amendment which is being sought to be incorporated there is no denial to the fact that the plaintiff was in the knowledge of the notice dated 14.9.2009 right from the date the present suit was filed, thus the trial court has passed a well reasoned detail order and indeed the relief being barred by limitation the present amendment cannot be allowed.

I have heard learned counsel for the parties and perused the record.

The plaintiff filed suit on 3.9.2009. An application seeking amendment of the plaint was filed to remove typographical error. The same was allowed. By way of present application the petitioner wants to amend relief clause by incorporating relief in the form of declaration to the effect that the cancellation of the agreement to sell dated 7.9.2009 and the forfeiture of the earnest money amounting to Rs.40,00,000/- by the defendants vide notice dated 14.9.2009 is illegal, null and void, inoperative and ultravires and is not binding on the rights of the plaintiff in the light of the law laid down by the Apex Court in **I.S.Sikander (D) By L.Rs Vs. K. Subramani and others 2014 (1) RCR (Civil) 236.**

In the considered opinion of this Court limitation is a mixed question of fact and law. Amendment cannot be denied merely on the ground that the same is barred by limitation. Question of limitation cannot be adjudicated while deciding interlocutory application. The Apex Court in the case of **Puran Ram Vs. Bhaguram and another's case (supra)** held that:

“Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch

as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in Pankaja and another Vs. Yellappa (Dead) by L.Rs and others, 2004 (3) RCR (Civi) 723: {(2004) 6 SCC 415}. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the Court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that at amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed. It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds.”

Moreover it won't be out of place to mention here that the relief clause in the suits for specific performance is governed by Section 22 of the Specific Relief Act, 1963. Section 22 is non-obstantive clause having overriding effect. It provides that where the plaintiff has not claimed any relief in the plaint, the Court shall at any stage of the proceedings allow him to amend the plaint on such grounds as may be just for including a claim for such a relief.

Consequently, the present revision petition is allowed. The order passed by the trial court dismissing the application filed by the plaintiff under Order 6 Rule 17 CPC is set aside. The amendment sought to be incorporated by way of application dated 27.11.2017 (Annexure P-3) is

allowed. Liberty is granted to the defendant to raise issue on limitation qua the relief incorporated by way of present revision.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

May 12, 2022
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Whether speaking/reasoned	Yes
Whether reportable	No