

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

-.-

CR-1250-2019 (O&M)
Date of Decision : 21.07.2022

Surender Kumar & Another

...Petitioners

versus

Smt. Kaushala Devi

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Chanderhas Yadav, Advocate for the petitioners.

Mr. Sanjay Mittal, Advocate for respondent No.1

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 30.01.2019 (Annexure P-5) whereby an application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') by the petitioners for amendment of the plaint has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for specific performance of agreement to sell dated 15.04.2013 as well as for declaration to the effect that legal notice dated 19.08.2013 regarding the termination of agreement to sell dated 15.04.2013 was illegal, null and void. In the plaint, the necessary averments were made. It was also averred that stamp papers worth Rs.1,19,000/- had also been purchased on 24.07.2013 for the execution of the sale deed. However, the

formal paragraphs stating that the plaintiffs were ready and willing to perform their part of the contract were inadvertently left out.

Learned counsel for the petitioners would contend that the amendment is only formal in nature and that from a plain reading of the plaint it was clear that it had been averred that the petitioner were ready and willing to perform their part of the contract. It is further the contention that no further evidence is required to be led on this point. In support of his arguments, learned counsel has relied upon a judgment of the Supreme Court passed in the case of **Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar** [1990 (1) SCC 166].

Per contra, the learned counsel for respondent No.1 has stated that the amendment has rightly been rejected as the same was filed beyond the period of limitation. It is further the contention that readiness and willingness is an essential ingredient to be averred and proved as per Section 16(c) of the Specific Relief Act, 1963.

Heard.

In the present case, a reading of the plaint reveals that it has been averred that in order to get the sale deed executed the plaintiff-petitioners had also purchased stamp papers worth Rs.1,19,000/-. The formal words that the plaintiffs were ready and willing to perform their part of the contract were inadvertently left out. In a similar situation, in the case of **Gajanan Jaikishan Joshi** (*supra*), their Lordships of the Supreme Court have held as under :-

“4. In the leading case of Pirgonda Hongonda Patii v. Kalgonda Shidgonda Patil and Others, AIR 1957 SC 363 a Bench comprising three learned Judges of this Court laid down the principles which should govern the question of granting or disallowing amendments. It was held by this Court that all amendments ought to be allowed which satisfy the two conditions: (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim.

5. In L.J. Leach & Co. & Anr. v. Messrs Jardine Skinner & Co., AIR 1957 SC 357 another Bench

comprising three learned Judges of this Court held that it is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice.

6. *If these principles are to be followed, there is little doubt that the learned judge was in error in rejecting the application for amendment made by the appellant. In the present case no fresh cause of action was sought to be introduced by the amendment applied for. All that the appellant sought to do was to complete the cause of action for specific performance for which relief he had already prayed. It was only that one averment required in law to be made in a plaint in a suit for specific performance in view of the provisions of sub-section (c) of section 16 of the Specific Relief Act was not made, probably on account of some oversight or mistake of the lawyer who drafted the plaint and that error was sought to be rectified by the amendment applied for. There was no fresh cause of action sought to be introduced by the*

amendment and hence, no question of causing any injustice to the respondent on that account arose.”

Keeping in view the fact that no further evidence needs to be led, as stated by the learned counsel for the plaintiffs-petitioners, and in order to do complete justice between the parties, the present revision petition is accepted, the impugned order dated 30.01.2019 (Annexure P-5) is set aside and the amendment application filed by the plaintiff-petitioner is allowed.

Pending applications, if any, also stand disposed off.

July 21, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO