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

**CR-3128-2022**

**Date of decision : 08.08.2022**

**Sunder Singh**

**...Petitioner**

**Vs.**

**Janki Devi**

**...Respondent**

**CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Amit Kumar Jain, Advocate for the petitioner.

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**MANOJ BAJAJ, J.**

Petitioner (defendant) has filed this revision petition to challenge the order dated 16.11.2021 passed by Civil Judge (Junior Division), Safidon, whereby his application under Order VI Rule 17 CPC for amendment of written statement was dismissed.

Brief facts of the case are that the plaintiff (respondent), namely, Janki Devi filed suit for recovery of Rs.12,40,000/- along with future interest @ 2% per month during the pendency of the suit and till the realization of the amount against defendant (petitioner). As per plaint, petitioner (defendant) being owner in possession of a plot measuring 168 square yards comprised in khewat No.48 khata No.107 situated in the revenue estate of village Singhapura, Tehsil Safidon on the basis of sale deed bearing Nos.1022 dated 27.07.2000 and No.1059 dated 10.08.2000 had agreed to sell the same to plaintiff for a total sale consideration of Rs.67 lac. Defendant received a sum of Rs.10 lacs as earnest money from plaintiff and further agreed to execute and register the sale deed up to 20.06.2016. The agreement to sell dated 02.12.2015 attested by

witnesses was also registered in Notary Register at Sr.No.368 dated 02.12.2015. However, on the target date, defendant failed to perform his part as per the terms of the agreement to sell dated 02.12.2015, therefore, plaintiff (respondent) is claiming recovery of earnest money of Rs.10 lacs along with interest @ Rs.2 % per month as despite several request and legal notice dated 02.11.2016, defendant has been avoiding the return of earnest money. On this cause of action, the suit was filed.

The suit is being contested by the defendant, who filed written statement and admitted the agreement to sell dated 02.12.2015 and pleaded that he is ready and willing to perform his part of contract, but the plaintiff has no sufficient means to pay the balance sale consideration, therefore, the agreement failed. The other averments contained in the plaint were also denied and in the end it was prayed that the suit be dismissed.

During the pendency of the suit, defendant filed an application seeking amendment of the written statement. The application was contested by the plaintiff by filing the reply and after considering the rival stand of the parties, Civil Judge (Junior Division), Safidon vide order dated 16.11.2021 dismissed the application.

Learned counsel for the petitioner has argued that the plaintiff has filed a suit against the petitioner/defendant for recovery of Rs.10 lacs which was paid by her pursuant to the agreement to sell dated 02.12.2015 and the petitioner/defendant had filed his written statement to contest the suit and denied the averments contained therein. He submits that now the petitioner wants to add a preliminary objection relating to the damages suffered by him, because of the failure of the agreement to sell dated 02.12.2015. According to

learned counsel, as defendant had also agreed to purchase the land from one Rajender son of Sat Parkash for sale consideration of Rs.60 lacs and executed the agreement dated 05.12.2015, but as the plaintiff of the present suit failed to perform her part of contract, his deal with Rajender also failed and the amount of Rs.20 lac paid as earnest money by him to vendor-Rajender was forfeited. Learned counsel has argued that the amendment sought to be incorporated in the written statement would not cause any prejudice to the plaintiff and the same is necessary for proper adjudication of the case, but the Civil Judge (Junior Division) Safidon has wrongly declined the same. He prays that the impugned order be set aside and application for amendment of written statement be allowed.

After hearing learned counsel and considering the above background, this Court finds that the suit filed by plaintiff is only for recovery of Rs.12,40,000/-, and interest wherein the defendant took a stand that the plaintiff was never willing to perform her part of the contract, therefore, cannot seek recovery of the earnest money, whereas the defendant is still ready and willing to execute and register the sale deed in her favour. Admittedly, there is no counter claim set up by defendant, much less to seek damages, therefore, the pleadings based upon the agreement executed by him with third party, namely, Rajender may not be relevant for decision of the present suit.

Besides, during the course of hearing, it is not disputed by learned counsel that the respondent/plaintiff has already concluded her evidence, therefore, this Court is of the opinion that in case the amendment of written statement is allowed at this stage, it would cause prejudice to the plaintiff.

Upon examining the impugned order, this Court finds that the trial

Court has carefully considered the facts and circumstances of the case while dismissing the application for amendment of written statement and the impugned order does not suffer from any illegality or impropriety.

Resultantly, petition fails and is dismissed.

(MANOJ BAJAJ)  
JUDGE

08.08.2022

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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |