

**121-A IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3306-2022 (O&M)

Date of decision : 09.09.2022

Jasbir Singh

...Petitioner

Vs.

Amrik Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Diwan S.Adlakha, Advocate for the petitioner.

MANOJ BAJAJ, J.

CM-11194-CII-2022

Application is allowed as prayed for.

Annexures P-7 and P-8 are taken on record.

Main case

Petitioner (defendant) has preferred this revision petition to challenge the order dated 01.08.2022 (Annexure P-6) passed by Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhari in Civil Suit No.4682-2013, whereby the application filed by plaintiff (respondent) seeking amendment of the plaint to incorporate the alternative relief of refund of earnest money along with interest and compensation in terms of Section 22 (2) Specific Relief Act, 1963, was accepted.

Briefly, the facts leading to this revision petition are that plaintiff-Amrik Singh filed a suit for specific performance of contract dated 21.08.2011 on the ground that the defendant executed this agreement to sell for sale of 20 kanals 15 marlas @ Rs.40 lacs per acre at the time of execution of the agreement for a sum of Rs.6 lacs was paid to the plaintiff and the balance sale consideration was to be paid at the time of executing the sale deed. It was

agreed between the parties that the sale deed would be executed by 31.01.2012. During the pendency of the suit, on 23.05.2022, plaintiff moved an application under Section 22 (2) Specific Relief Act, 1963 for adding alternative relief of refund of earnest money along with the interest and compensation and the said application was contested by the defendant by filing reply dated 07.07.2022.

The trial Court after considering the averments of the parties, accepted the application and allowed the amendment vide order dated 01.08.2022 (Annexure P-6). Hence this revision petition.

Learned counsel for the petitioner has argued that initially the plaintiff had filed the suit for injunction praying for restraining the defendant from alienating the suit property in any manner, but later on he sought amendment in order to seek relief of possession by way of specific performance of the agreement to sell dated 21.08.2011. According to learned counsel, the impugned amendment relating to refund of earnest money in the plaint could have been prayed previously, but the trial Court has completely ignored it, while again allowing amendment of plaint. He submits that according to the plaintiff himself, in case of failure on his part to perform his part of the contract, the earnest money is to be forfeited, and once the defendant has already conveyed the forfeiture of earnest money to the plaintiff, through legal notice dated 22.02.2012, the trial Court has wrongly allowed this amendment by overlooking the period of limitation also. In support of his case, learned counsel has relied upon the decision of Hon'ble Supreme Court in **"Manickam @ Thandapani and another Vs. Vasantha", 2022 (2) R.C.R. (Civil) 862, "Vidyabai and others Vs. Padmalatha and another" 2009 (1) R.C.R. (Civil) 763, "B. Santoshamma and another Vs. D.Sarala and**

another”, 2020 (4) R.C.R. (Civil) 417, “Jagdish Singh Vs. Natthu Singh”, 1992 (1) B.L.Jud. 724 and “Bhagwati Prasad Jalan Vs. Smt. Prem Lata Devi Kedia and others” 1998 (1) CivCC 272. He prays that the impugned order be set aside.

After hearing learned counsel for the petitioner and considering the above background, this Court finds that by way of the amendment in the plaint, the plaintiff seeks to add the alternative relief of refund of earnest money, in terms of Section 22 Specific Relief Act, 1963 and the same reads as under:-

“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 (5 of 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 1[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.”

A perusal of the above makes it clear that this section vests power with the trial Court to grant relief to the plaintiff relating to possession, partition, refund of earnest money etc., but the same cannot be granted in the absence of any such claim in the plaint. Further, the proviso to Sub Section (2) Section 22 empowers the Court to allow the amendment in this regard, “at any stage”, of the proceedings. Thus, the above provision cannot be equated with

general principles relating to amendment of pleadings i.e. the plaint or written statement, as contemplated by Order VI Rule 17 CPC.

Further, the language contained in proviso to sub Section 22 (2) leaves no room for any doubt that this section introduces elasticity in the prayer clause of the existing plaint, by enabling the plaintiff to add the relief of refund of earnest money at any stage of the suit. Here it needs to be noticed that in every suit for specific performance of contract, primary prayer by the plaintiff is regarding enforcement of an agreement, whereas the prayer for refund of earnest money is an alternative relief. Thus, the prayer for refund of earnest money being ancillary relief in nature to the primary prayer in the suit can be added subsequently also and it would not be hit by law of limitation, because the subsequent relief claimed by amendment in the plaint rests on the same cause of action relating to the prayer for specific performance.

Once the statute has given the liberty to the plaintiff to add relief regarding refund of earnest money at any stage, during the pendency of the suit, therefore, the plaintiff cannot be non-suited on technicalities by construing such relief as a fresh claim, because it would relate back to the original cause seeking specific performance of the contract.

The other argument by the learned counsel that since previously the plaintiff had sought amendment of plaint who failed to add the relief of refund of earnest money, therefore, cannot seek this relief at the fag end of the suit, is also without any merit. No doubt, previously the plaintiff had sought amendment of plaint, but through the said application, he had sought amendment of the pleadings, whereas in the present impugned amendment, he is only adding alternative relief in the prayer clause only without altering the

basic structure of the suit.

In *Manickam's case (supra)*, pursuant to the decree in favour of decree holder, the sale deed stood executed, but later on decree holder sought possession of the property through execution petition and the same was held to be not maintainable through the impugned order. The Hon'ble Supreme Court while reversing the said order observed that the provisions of Section 22 (2) Specific Relief Act, 1963 are only directory and further while examining the expression “at any stage of proceedings” it was held to be wide enough to allow the plaintiff to seek relief of possession, even at the appellate stage or in execution. In view of this decision, it is apparent that an amendment in the prayer clause relating to the refund of earnest money can be inserted at any stage during the pendency of the suit. The other judgments relied upon by the learned counsel are not applicable in the facts and circumstances of this case.

Thus, this Court has no hesitation in holding that the impugned order does not suffer from any illegality or impropriety and does not call for interference.

Resultantly, the revision petition fails and the same is dismissed.

(MANOJ BAJAJ)
JUDGE

09.09.2022
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