

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

**CR-3469-2022
Decided on:-29.08.2022**

Gurmail Singh

....Petitioner..

VS.

Kuldeep Singh

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prashant Bansal, Advocate,
for the petitioner.

HARKESH MANUJA J.

Present revision petition has been directed against the order dated 16.03.2022 (Annexure P-7) whereby an application filed on behalf of the petitioner-plaintiff for framing two additional issues has been partly rejected.

2. The petitioner-plaintiff filed a suit for possession by way of specific performance on the basis of an agreement to sell dated 03.08.2011 executed in his favour at the instance of respondent-defendant qua agricultural land measuring 5 kanals 16 marlas. During trial, the petitioner moved an application seeking amendment of plaint so as to incorporate the plea of refund of his earnest money. The prayer for amendment of plaint made on behalf of the petitioner was allowed by the learned trial court vide order dated 23.12.2020 and resultantly, the amended plaint was taken on record.

3. In pursuance to the amended plaint filed on behalf of the petitioner, the learned trial court permitted the respondent-defendant to submit his amended written statement. On 27.10.2021, the petitioner moved an application for framing following additional issues on the basis of amended pleadings:-

“1. Whether the defendant has no clear and authentic legal possession and title of the land which he proposed to sell and the defendant has not got partitioned his specific share and independent passage to the land? OPD

2. Whether the plaintiff is entitled to seek an alternative relief of refund of Rs.12 lacs paid to the defendant as earnest money? OPD”

4. The learned trial court vide its impugned order dated 16.03.2022 partly allowed the application filed on behalf of the petitioner by allowing one additional issue No.1-A to the following effect:-

“1-A Whether the plaintiff is entitled to alternative relief of recovery for Rs.12 lakhs along with interest, if so at what rate? OPP”

5. After passing of the impugned order on 16.03.2021, suit was adjourned for recording of petitioner/plaintiff's evidence on the additional issue and the matter was adjourned to 22.04.2022. On the said date i.e. 22.04.2022, the petitioner could not bring his evidence and the matter was further adjourned for the same purpose to 11.05.2022. On 11.05.2022, the position remained the same as there was no evidence produced on behalf of the petitioner, as such, his evidence was closed by court order. Thereafter, the matter was adjourned by the learned trial court so as to explore the possibility of settlement as well as respondent-defendant evidence. While the respondent-defendant evidence was going on for quite sometime, it is at

this belated stage, the petitioner sought challenge to the order dated 16.03.2022. Firstly, the delay in challenging the impugned order dated 16.03.2022 on the part of the petitioner appears to be malafide as the petitioner is only trying to stall the proceedings so that he gets a chance to challenge order dated 11.05.2022, vide which, his evidence was closed by the court order. Further from the amended pleadings, which have been made part of the present civil revision, the amendment carried out in the plaint is simpliciter based on the fact that the respondent-defendant was not having a clear title to the land in question and the same had not been got partitioned by him from his other co-sharer and therefore, he was not in a position to hand over legal possession to the petitioner-plaintiff, as such, the petitioner-plaintiff incorporated the alternate prayer for refund of earnest money with interest.

6. Considering the amendment of pleadings carried out by the parties before the learned trial court, issue No.1-A framed as an additional issue itself completely covers the entire dispute based on the amending pleading and as such, no further issue as has been prayed for in the application made by the petitioner is required. The non-framing of the additional issue sought for by the petitioner is not going to cause him any prejudice as the parties are already alive to their dispute and can lead their entire evidence on the already framed additional issue. Moreover, the filing of the present revision petition also appears to be an abuse of the process of law, so as to just buy time for filing revision against the order dated 11.05.2022 passed by learned trial court whereby evidence of the petitioner was closed by court order.

7. Thus, finding no merits in the present revision petition, the same is hereby dismissed with no order as to costs.

29.08.2022
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Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/ No

(HARKESH MANUJA)
JUDGE