

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

CR-3724-2022 (O&M)

Date of decision : 08.09.2022

Charanjit

...Petitioner

Vs.

Harvilas Rai

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Onkar Rai, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (defendant) has filed this revision petition under Article 227 Constitution of India to challenge the order dated 30.08.2022 (Annexure P-5) passed by Civil Judge (Junior Division), Phagwara, whereby his application under Order XVIII Rule 17 Code of Civil Procedure, 1908 for recalling the plaintiff and his witnesses for further cross examination, has been dismissed.

Briefly, the facts of the case are that plaintiff (respondent) brought a suit for possession by way of specific performance relating to property i.e. shop constructed on land measuring 1 marla being 1/578 share out of 28 kanals 18 marlas comprised in khasra Nos.2777/1-6, 2778/5-16, 2778/5-6, 2779/9-1, 2780/1/2-8, 2799/10-7, kitta/5, khata No.977/1584 situated at village Phagwara Sharki, Sham Nagar, Tehsil Phagwara, District Kapurthala against defendant-Charanjit Singh (petitioner), on the basis of agreement to sell dated 01.11.2014, for a total sale consideration of ₹6 lacs. As per the pleadings, the plaintiff at time of execution of agreement to sell paid ₹2 lacs as earnest money to the defendant on 01.11.2014, and sale deed was to be executed on 21.04.2015, however, on the said date, defendant

failed to perform his part of the contract, therefore, plaintiff issued legal notices dated 03.09.2016 and 30.06.2017 respectively, to the defendant, which were duly served upon him. But, despite the repeated requests by plaintiff to execute the sale deed, the defendant failed to do so. In the alternative, plaintiff has prayed for recovery of ₹4 lacs and as a consequential relief, plaintiff also sought injunction for restraining the defendant, his attorneys, agents, executors and representatives etc. from alienating, transferring, mortgaging and leasing out the suit property to anybody except him.

The suit was contested by defendant by filing written statement, who raised various objections relating to maintainability of the suit etc. and on merits, it was pleaded that the he never entered into any agreement to sell with the plaintiff and alleged that agreement to sell in question is a result of fraud. While denying the other averments in the plaint, it was prayed that the suit be dismissed.

During the pendency of the suit, when the case was fixed for defendant's evidence, an application under Order XVIII Rule 17 CPC was moved by defendant for recalling the plaintiff and his witnesses for further cross examination. The application was opposed by the plaintiff/respondent on the ground of maintainability and the same was dismissed by Civil Judge (Junior Division), Phagwara vide impugned order dated 30.08.2022. Hence this revision petition.

Learned counsel for the petitioner has argued that the suit of the plaintiff relates to the agreement to sell dated 01.11.2014 and as per the written statement, the said agreement is result of fraud and

misrepresentation. He submits that subsequently, the petitioner was allowed to amend his written statement to further plead that the defendant had not executed the said agreement to sell in favour of the plaintiff. He submits that as no question regarding agreement to sell was put to the plaintiff's witnesses, therefore, the witnesses be re-called for further cross-examination. In support of his argument, learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in “**Ram Rati Vs. Mange Ram and others**”, (2016) 160 AIC 10. He prays that the impugned order be set aside.

After hearing learned counsel for the petitioner, this Court does not find any merit in the argument that after amendment of written statement, the defendant is justified in recalling of plaintiff and his witnesses for further cross-examination. A perusal of the case file shows that the amendment in the written statement was allowed by the trial Court vide order dated 28.03.2022, and by that time evidence of the plaintiff stood closed. Since, the amendment is formal in nature and it does not introduce new plea by defendant, as it only explains his stand relating to the agreement to sell, which is already depicted in the initial written statement, therefore, it cannot be construed as an extra ordinary ground for recalling the witnesses.

During the course of hearing, it is also not disputed by the learned counsel that though in the written statement, a specific plea was raised that the alleged agreement to sell is a result of fraud and misrepresentation, but no issue in this regard was pressed by the petitioner. Further, even if, the plea raised in the written statement to controvert the case of the plaintiff is to be proved by the defendant, this onus is to be

discharged by him by leading his evidence. Further, the decision relied upon by the learned counsel in support of his case would not be applicable in the facts and circumstances of this case. No doubt, Order XVIII Rule 17 Code of Civil Procedure, 1908 contemplates recalling of a witness, but this power cannot be exercised merely on the asking of a party, as it can only be exercised in appropriate cases, where the Court requires clarification from the witness. In case the prayer of the petitioner is allowed, it would amount to filling up the lacunae.

A perusal of the impugned order dated 30.08.2022 shows that it does not suffer from any illegality and impropriety, therefore, no ground is made out for exercising the superintendence powers under Article 227 Constitution of India.

Resultantly, revision petition is dismissed.

(MANOJ BAJAJ)
JUDGE

08.09.2022
vanita

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