

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115

CR-657-2023

Date of decision: 01.02.2023

Amarjit Singh (Since Deceased) through LR

...Petitioner(s)

Vs.

Sukhwinder Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Lakhwinder S. Sidhu, Advocate for the petitioner.

NIDHI GUPTA, J.

Present revision petition has been filed seeking setting aside of order dated 17.01.2023 (Annexure P-16) passed by learned Additional District Judge, Patiala in Civil Appeal No.CS/249/2016 titled as "Amarjit Singh Vs. Sukhwinder Kaur Etc." whereby application filed by the petitioner for deciding the application under Order 6 Rule 17 CPC has been dismissed; with further prayer that learned Appellate Court/Additional District Judge, Patiala be directed to decide application dated 06.01.2017 filed by the petitioner under Order 6 Rule 17 CPC for amendment of plaint.

Brief facts of the case are that petitioner/plaintiff-Amarjit Singh had filed a Suit for specific performance of agreement to sell dated 09.05.2005, and permanent injunction restraining the defendants from alienating suit land or creating any charge or encumbrance thereupon. The said Suit was dismissed vide Judgment and Decree dated 10.02.2016 (Annexure P6).

The petitioner challenged the above said Judgment and Decree by way of Appeal (Annexure P7). It is in this appeal that the petitioner/appellant filed application dated 06.01.2017 (Annexure P9) under Order 6 Rule 17 and Section 151 CPC read with Sections 21 and 22 of the Specific Relief Act, for amendment of the plaint. During pendency of this application, the petitioner filed another application dated 10.01.2023 (Annexure P14) praying thereby that the above-mentioned application filed under Order 6 Rule 17 CPC, be decided. It is this application dated 10.01.2023 (Annexure P-14), which has been dismissed by way of impugned order dated 17.01.2023. Hence, the present Civil Revision.

It is submitted by learned counsel for the petitioner that it was due to inadvertent error that petitioner/plaintiff had failed to include the following para in his plaint:-

“That if for some reasons the specific performance of the agreement cannot be enforced then in that the plaintiff is entitled to recover Rs.24,85,000/- from the defendants along with interest @ 18% P.A. till actual realization.”

Learned counsel for the petitioner further refers to Section 22 of the Specific Relief Act, reproduced hereinbelow:-

“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. ”

Learned counsel for the petitioner submits that as per Section 22 of the Specific Relief Act, it is clear that relief of refund of earnest money or deposit paid, can be sought at any stage of the proceeding, and there is no limitation provided under the law for seeking amendment to this effect. It is also submitted that as per proviso to above Section 22 of the Specific Relief Act, power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its power to award compensation under Section 21.

It is further submitted that if the said amendment is not allowed then petitioner will suffer loss and harm. Accordingly, prayed that as the petitioner could not seek relief of refund of earnest money in his plaint before the learned trial Court due to an inadvertent error, he may be permitted to amend the plaint.

No other argument is made on behalf of the petitioner.

I have heard learned counsel for the petitioner.

A perusal of the impugned order dated 17.01.2023 (Annexure P-16) shows that by way of the said order only application dated 10.01.2023 of the petitioner praying for deciding application of the

petitioner under Order 6 Rule 17 CPC, has been dismissed. It is further noted in the impugned order that the learned Appellate Court had directed for hearing of the application under Order 6 Rule 17 CPC along with main appeal. I do not find any error in the said order.

Perusal of the order further shows that petitioner had moved two transfer applications before the learned District Judge, Patiala on the ground that *“he has since moved an application u/o VI rule 17 CPC before the Appellate Court, which is not being decided, due to which apprehension has developed in his mind, that he will not get justice from learned Appellate Court”*. While dismissing the said application for transfer vide order dated 03.01.2023, learned District Judge, Patiala noted that there was no sufficient ground to exercise power of transfer, and that *“Indeed all the miscellaneous applications are to be heard along with the main arguments and as such no miscellaneous application need be heard before deciding the main appeal.”* Learned counsel for the petitioner has been unable to show as to how he is prejudiced on the hearing of application under Order 6 Rule 17 CPC along with the main appeal.

Moreover, a perusal of zimni orders at Annexure P13 shows that matter has been adjourned from time to time on request of both the parties, and has also been delayed due to onset of Covid-19.

In any event, be that as it may, I find no error in the impugned order, especially as learned Additional District Judge, Patiala has already directed that petitioner’s application under Order 6 Rule 17 CPC be heard along with main appeal. It is clear that the petitioner was not alive to his

rights at the relevant time, and now cannot by way of right demand that his application be heard before the main appeal is heard.

Dismissed.

01.02.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No