

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-7636-2015

Date of decision: 30.11.2023

Rupinder Pal

....Petitioner

Versus

Tara Chand Through Lrs Promila and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. Ishwinderpal Singh, Advocate and
Mr. Alok Mittal, Advocate for respondents.

AMARJOT BHATTI, J.

1. The petitioner - Rupinder Pal has filed the present civil revision under Article 227 of the Constitution of India for setting aside the order dated 15.10.2015 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Nabha whereby the application filed by the petitioner under Order 6 Rule 17 for amendment in the plaint has been dismissed.

2. Learned counsel for the petitioner argued that Tara Chand (deceased) now represented through his legal heirs entered into an agreement to sell dated 24.12.2008 regarding 4 kanal, 0 marlas of land being 80/1974 share out of 98 kanal 14 marlas of land situated at Nabha with the petitioner. As per this agreement to sell, he received Rs.9 lacs as earnest money and the sale deed was to be executed by 30.07.2009 in

favour of the petitioner on receiving the balance sale consideration. As per the spirit of the agreement, the sale deed of half share of the land was to be executed and registered by 30.04.2009 in favour of the petitioner after receiving the sale amount accordingly. Tara Chand failed to execute the sale deed on or before the date fixed and the petitioner came to know that the land which is subject matter of the agreement to sell dated 24.12.2008 was under attachment in some litigation between the defendant-Tara Chand and Food Corporation of India. Therefore, the sale deed could not have been executed by Tara Chand and the petitioner filed suit for recovery of Rs.18 lacs i.e. Rs.9 lacs on account of principal amount and Rs.9 lacs as damages. The copy of plaint is Annexure P-1 and the written statement filed by defendant-Tara Chand is Annexure P-2. After the death of Tara Chand, his legal heirs were impleaded as party. The issues were framed and the case was fixed for plaintiff evidence. On 07.08.2015, the petitioner obtained copy of revenue record and came to know that the land was released from attachment and it was free from all encumbrances. Thereafter, immediately the present petitioner filed application under Order 6 Rule 17 of CPC for the amendment of plaint seeking the relief of specific performance of agreement to sell dated 24.12.2008. The copy of application for amendment of the plaint along with amended plaint are Annexures P-3 and P-4. The application was opposed by the respondents. The reply is Annexure P-5. The amendment application was declined by passing impugned order dated 15.10.2015 which is Annexure P-6.

Learned counsel for the petitioner pointed out that the proposed amendment is not going to change the nature of the suit and the

respondents/defendants will not suffer any prejudice. The suit was still at initial stage when the application for amendment was filed. The prayer of specific performance of agreement to sell was not made as the property was under attachment. Once, the property is free from all encumbrances then the present petitioner has every right to claim the relief of specific performance of agreement to sell. The proposed amendment is necessary for just decision of the case and it will also prevent multiplicity of litigation. The nature of the suit will not change as it is based on the same agreement to sell dated 24.12.2008. The learned counsel for the petitioner in support of his arguments has relied upon the authority of Hon'ble Apex Court in Civil Appeal No.787 of 2001 (arising out of the SLP(Civil) No.420 of 2000) decided on 23.01.2001 case titled as ***"Ragu Thilak D.John Vs. S.Rayappan"*** where in that case on application under Order 6 Rule 17 for amendment of plaint it was held in para No.6 as under:-

"6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for.

In view of the legal position, as noted hercinabove, the impugned order is not sustainable. Accordingly, the appeal is allowed by setting aside the impugned order and permitting the appellant-plaintiff to amend the plaint subject to payment of costs of Rs. 500/-. Appeal allowed.”

On this point, the learned counsel for the petitioner has relied upon another authority in *Civil Appeal No.4983-4984 of 2004 of Hon’ble Apex Court in case titled as “Pankaja & Anr. Vs. Yellappa (D) by Lrs. & Ors.”*. The relevant paras No. 13 and 14 runs as under:-

“13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the Court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case”

In that case in para No.18 finally it was observed that there is an arguable question whether the limitation application for seeking the relief of declaration on facts of the case fall under Entry 58 of the Limitation Act or under Entries 64 and 65 of the Limitation Act which question has to be decided in the trial, therefore in our view the following judgment of this Court in 2001(2) SCC 472 in *“Ragu Thilak D.John’s case (supra)”* we set aside the impugned order of the courts below and allow the amendment prayed for and direct the trial Court to frame necessary issue in this regard and decide the said issue in accordance with law bearing in mind the law laid down by this Court in AIR 1957 Supreme Court 357 titled as *“L.J.Leach and Co. Ltd. & Anr. (supra)”* and appeal was accordingly accepted”.

Learned counsel for the petitioner argued that merely on the ground that the claim of the plaintiff is barred by limitation, the amendment sought by the petitioner cannot be declined. Therefore, the impugned order dated 15.10.2015 (Annexure P-6) may kindly be set aside by allowing the amendment application filed by the present petitioner/plaintiff.

3. On the other hand, the learned counsel representing the respondent-Tara Chand now represented through legal heirs strongly opposed the application. It is pointed out that the plaintiff never filed suit for specific performance of agreement to sell dated 24.12.2008 and he opted to file suit for recovery of Rs.18 lacs i.e. Rs.9 lacs on account of principal amount and Rs.9 lacs as damages. The case was fixed for plaintiff evidence when the application for amendment of the plaint was filed. Now at this belated stage, the present petitioner cannot be allowed

to amend the plaint by claiming alternate relief of specific performance of the said agreement to sell. To support his arguments, the learned counsel for the respondent has relied upon the authority cited in *1991(1) R.R.R.295 Punjab and Haryana High Court (DB) case titled as "Roop Chand Chaudhari vs. Ranjit Kumari"* where in that case there was application under Order 6 Rule 17 for the amendment of the plaint in a suit for return of earnest money along with damages. In that case, the decisions of Hon'ble Supreme Court recorded in *"Jawahar Lal Wadhwa V. Haripada Chakroberty", AIR 1989 Supreme Court 606* was relied upon and on that basis, it was observed that once a suit for return of earnest money/advance or grant of damages is filed such a plaintiff dis-entitles himself to the alternate relief of specific performance even if claimed in the suit. If that is so, he cannot be allowed to amend his plaint later on to claim specific performance of the contract as the first relief and return of earnest money/advance or damages as an alternate relief. This is primarily on the rule that a claim for return of earnest money/advance and/or damages can be based on reputation of contract for one reason or the other and once the contract is repudiated, the relief of specific performance should not be available either as an alternate relief as was held in a case *"Prem Raj v. D.L.F.H. & C. (Pvt.) Ltd. and Anr.", AIR 1968 Supreme Court 1355* case by the Supreme Court, nor would such a relief be admissible regarding the amendment as is sought in a case. Consequently in that case, the revision was allowed and the application to amend the plaint was dismissed.

On this point, the counsel for respondent has also relied upon

the authority of Coordinate Bench in CR-3127-2011 decided on 17.08.2012 in a case titled as *“Partap Singh Vs. Ranjit Singh and others”* and in another CR-4132-2012 decided on 04.08.2015 case titled as *“Jagdev Singh Vs. Gursewak Singh”*.

The learned counsel for the respondent further pointed out that the amendment sought by the petitioner seeking relief of specific performance of agreement to sell dated 24.12.2008 is also hopelessly barred by limitation and at this belated stage, he cannot be permitted to amend the plaint. After considering the said facts, the application filed by the petitioner/plaintiff seeking amendment of the plaint was rightly dismissed.

4. I have considered the arguments advanced by learned counsel for both the parties and have gone through the record carefully. It is a matter of record that Rupinder Pal, the present petitioner filed suit on 18.11.2010 for recovery of Rs.18 lacs i.e. Rs.9 lacs on account of principal amount and Rs.9 lacs as damages on the basis of agreement to sell dated 24.12.2008. As per the plaint, cause of action arose to him when the agreement to sell dated 24.12.2008 was entered between the parties. Thereafter, on 30.04.2009 when the sale deed was to be executed regarding half of the land and finally on 24.09.2010 when the defendant refused to refund the amount along with damages by serving reply to the notice served upon him on 14.09.2010. It was further held that finally a week ago, he refused to make the payment and ultimately the suit was filed.

The aforesaid facts clearly indicate that the present petitioner neither filed suit for specific performance of agreement to sell dated

24.12.2008 nor he sought this relief in the alternative. He merely filed a suit for recovery of earnest money along with the damages. The present petitioner filed application seeking amendment of the plaint on 12.08.2015 after a lapse of about 04 years 08 months. Whereas the date for the execution and registration of the sale deed was firstly on 30.04.2009 and the final date was 30.07.2009. The learned counsel for the petitioner has wrongly claimed that the proposed amendment will not change the nature of the case. As referred above he filed suit for recovery of earnest money along with damages and now by way of amendment, he is seeking the proposed relief of specific performance of agreement to sell dated 24.12.2008. The present petitioner himself relinquished his claim seeking the relief of specific performance of agreement to sell initially. Therefore, now at this stage, he cannot be permitted to amend the plaint seeking the relief of specific performance of agreement to sell.

The aforesaid relief sought by him has to be considered by keeping in mind the provisions of Limitation Act. Therefore, I find force in the arguments advanced by learned counsel for the respondent. On this point, I put reliance on the authority cited in ***2022(4) CivCC 540 Supreme Court case titled as "Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr."*** where the Hon'ble Apex Court has summed up the facts which are to be considered while dealing with the provisions under Order 6 Rule 17 regarding amendment of the pleadings. Para No.70 of the judgment runs as under:-

“(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings

falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in car ain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-

pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

In view of my aforesaid discussion, the learned trial Court has rightly declined the application filed by the petitioner seeking amendment of the plaint by passing order dated 15.10.2015 and the same does not require any interference. Thus the civil revision preferred by the present petitioner/plaintiff is accordingly declined.

30.11.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No