

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2928-2023 (O&M)

Date of decision: 11.05.2023

MEENAKSHI AND ANR

...Petitioners

VS

GAGAN JOT SINGH AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jaideep Verma, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

CM-8814-CII-2023

Application is allowed, as prayed for, subject to all just exceptions.

Main case

Present revision petition is to set aside impugned order dated 16.01.2023 (Annexure P-1) whereby application filed by plaintiff/respondent No.1 under Order 6 Rule 17 read with Section 151 CPC for amendment in plaint, was allowed and another order dated 05.04.2023 (Annexure P-5) passed by learned Civil Judge (Junior Division), Kharar, vide which application filed by defendants No.1 and 2/petitioners jointly and defendant No.3 separately for setting aside the *ex parte* order passed against them on 16.01.2023, was dismissed in Civil Suit bearing No.CS/414/2016 registered on 04.07.2016 (Annexure P-6) filed by respondent No.1 herein in which next date of hearing is fixed as 16.05.2023 for *ex parte* arguments.

2. Learned counsel for petitioners submits that respondent No.1 filed a suit for mandatory injunction directing petitioners to execute the sale deed as per agreement to sell dated 01.08.2014 *qua* the suit property. Upon notice, petitioners appeared and moved an application dated 27.09.2016 under Order 7 Rule 11 for rejection of plaint. Thereafter respondent No.1

moved an application for amendment of plaint to incorporate the plea of specific performance and alternative suit for recovery. The application was allowed and petitioners were proceeded *ex parte* and matter was adjourned for *ex parte* evidence of plaintiff/respondent No.1 herein. Thereafter, petitioners filed application to set aside the *ex parte* order, which was dismissed vide impugned order dated 05.04.2023 (Annexure P-5).

3 Expounding his arguments, learned counsel would submit that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioners/defendants No.1 and 2 may be permitted to participate in the proceedings and file amended written statement in the interest of justice and equity.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. I have heard learned counsel for petitioners and perused the case file.

6. Order dated 16.01.2023 (Annexure P-1) assailed herein is premised *inter alia* on the following reasoning:

16. *From the pleadings of the application it is transpired that the plaintiff wants to convert the suit for mandatory injunction into suit for specific performance.*

17. *Perusal of the pleadings mentioned by the plaintiff in his plaint shows that he has prayed that a decree for possession by way of specific performance of agreement of sale dated 01.08.2014 be passed in his favour. It further shows that he has mentioned all the circumstances in which the agreement of sale dated 01.08.2014 was executed and has also pleaded that he has always remained ready and willing to perform his part of agreement and even now he is ready and willing to perform his part of agreement but defendants No.1 and 2 were never ready and willing to perform their part of agreement of sale dated 01.08.2014. Thus, in the present case in pith and substance, the plaintiff is seeking for specific performance by way of agreement of sale dated 01.08.2014 from the defendants.*

18. *Perusal of the file further shows that the suit is at its initial stage and no issues in this case has been framed so far.*

19. *Order 6 Rule 17 CPC envisaged that Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Thus, the Court is the opinion that the amendment which plaintiff is seeking to made in his plaint is necessary for determining the real question in controversy and to decide the matter once for all. The Court is further of the opinion that the nature of the suit is not going to change if the proposed amendment is allowed as by way of mandatory injunction. Plaintiff was seeing direction against the defendants to perform his part of agreement of sale. Since inception plaintiff is seeking specific performance of agreement by filing the suit for mandatory injunction, therefore, it cannot be held that due to afflux of time valuable right of limitation in favour of the defendants has accrued. Further, with permission of Court plaintiff has already furnished the ad-valorem Court fee on the relief claimed by him. Thus, the Court is of the opinion that no prejudice is going to cause to the defendants if the application in hand is allowed.*

20. *Keeping in view the discussion above, the application under order 5 rule 17 CPC filed by plaintiff is hereby allowed."*

7. There is no room for interference in the aforesaid valid reasons recorded by learned Court below in the impugned order dated 16.01.2023 (Annexure P-1) as no material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein *qua* order dated 16.01.2023 (Annexure P-1). No fault can be found with the approach of learned trial Court in allowing the amendment of plaint, which was within limitation.

8. However, *qua* order dated 05.04.2023 also assailed herein, I am of the view that provisions of Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but learned Court below could have permitted the petitioner to join proceedings and file amended written statement subject to certain penalty as a deterrent.

9. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by filing written statement ought not to be taken away by the Court below except in a case of their deliberate omission/failure to file written statement, particularly when the other side can be compensated with costs. Prejudice would indeed be caused to petitioners herein, unless afforded an opportunity to participate in the proceedings and file amended written statement.

10. Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioners to file amended written statement.

11. Learned counsel for petitioners undertakes to file amended written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

12. My attention has been drawn to para 19 of the impugned order dated 05.04.2023 (Annexure P-5), which seems to have weighed on the mind of learned Trial Court below while declining the application of petitioners to join proceedings by filing amended written statement to the amended plaint as well as to defend themselves in the trial. No doubt, conduct of defendants No.1 and 2, as observed by learned Trial Court does not inspire any confidence but at the same time to treat defendant No.3 on parity, learned Trial Court seems to have committed manifest error in the facts and circumstances of the case since defendant No.3/pro forma respondent No.2 herein was proceeded *ex parte* on a particular day i.e. on 17.02.2018 and subsequently ought to have been and was rightly allowed to participate in the proceedings.

13. In the premise, for not allowing the petitioners to file amended written statement and participate in the trial merely because on the day when amendment was allowed they remained unrepresented would severely jeopardize their rights to defend themselves and cause serious prejudice to them.

14. For the foregoing reasons, petitioner-defendant No.1 is allowed to participate in the trial for further proceedings. I deem it appropriate to grant one effective opportunity to petitioner-defendant No.1 to file amended written statement, subject to costs of Rs.5,000/- to be paid to plaintiff/respondent No.1, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order dated 05.04.2023 (Annexure P-5) shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed, dispensing with notice to respondents.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.05.2023
vandana

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