

CR-3486 of 2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3486 of 2023

Judgment Reserved on: 03.10.2023

Judgment Pronounced on: 31.10.2023

Mohan Chauhan

...Petitioner

Versus

Tej Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Ashutosh Dhankar, Advocate,
Mr Rohit, Advocate, and
Mr. Santosh Sharma, Advocate,
for the petitioner.

Mr. R.N. Lohan, Advocate,
for respondent Nos. 1 to 9.

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been filed by the plaintiff (petitioner herein), challenging the order dated 08.05.2023 (Annexre P-5) passed by learned Additional Civil Judge (Senior Division), Sonapat, whereby an application under Order VI Rule 17 of the Civil Procedure Code (C.P.C.), for seeking amendment of pleading in the plaint at the instance of plaintiff, has been dismissed.

2. Plaintiff filed a civil suit No.335/2018 against the defendants (respondents herein) praying for a decree of possession by way of specific performance of the contract and also to declare the legal notice dated 01.06.2016 issued by defendants to the plaintiff through Sh. Ashwani Sharma, Advocate, as illegal, null, void, and not

binding on the rights of the plaintiff; along with consequential relief of injunction.

Pleaded case of the plaintiff is that vide agreement to sell dated 19.10.2015, defendants entered into an agreement with the plaintiff with regard to the sale of agricultural land measuring 29 Kanals and 1 Marla i.e. 581/872 share of the total land 43 Kanals-12 Marlas comprised in Khewat No. 81, 289, 290, 600 and Khata No.90, 340, 341, 687, Rect. and Killa Nos. 571/23/1 (5-8), 76//3/1(6-4), 57//17/2(7-11), 18/1/2(0-12), 18/2(2-12), 23/2 (2-12), 76//4/1(2-13), 57//24(8-0), 56//14(8-0), situated within the revenue estate of Village Akbarpur Barota, sub Tehsil Rai, District Sonipat, as per *Jamabandi* for the year 2006-2007 and *fard badai* No.5 vide mutation No.6586 dated 05.02.2013. In this land, defendant No.1 has 291/872 share, defendants No.2 to 5 are having 179/872 share, defendant No.6 is having 5/872 share, defendant No.7 is having 39/872 share and defendant No.8 & 9 are having 67/872 share respectively.

3. At the time of entering into agreement to sell, the sale consideration is pleaded to be as Rs.1 Crore per acre i.e. totalling to Rs.3,63,12,500/-. On 19.10.2015 i.e. on the same day on which agreement to sell was executed, the defendants received an amount of Rs.36,31,250/- as earnest money from the plaintiff against proper receipt. Out of the said amount, amount of Rs.34,31,250/- was received by the defendants in cash while an amount of Rs.2,00,000/- was received by defendants by way of two separate cheques i.e. cheque No.018565 dated 19.10.2015 issued in the name of defendant-

Tej Ram and cheque No.018566 dated 19.10.2015 issued in the name of defendant-Puran Singh of Oriental Bank of Commerce. Both the cheques were realized by these defendants. For the specific performance of the contract, defendants were expected to get the revenue record corrected with respect to the number of mutations and were also required to obtain the no objection certificate (NOC) from the competent Authority before 15.04.2016 i.e. the date fixed for the execution of sale deed and its registration in favour of the plaintiff.

4. Plaintiff further pleaded that alongwith the performance of agreement to sell, there was a prayer for the issuance of a declaratory decree also for declaring the legal notice dated 01.06.2016, issued by defendants to the plaintiff through Sh. Ashwani Sharma, Advocate as illegal, null, void, and not binding on the rights of the plaintiff.

For the purpose of convenience, the prayer made in the suit is reproduced hereunder:

“ It is therefore, prayed that a decree for specific performance of the agreement to sell dated 19.10.2015 be passed in favour of the plaintiff and against the defendants by way of directing the defendants to fulfill their part of the terms and conditions of the agreement dated 19.10.2015 and then, to execute and get registered the sale deed in respect of the land under agreement to sell in favour of the plaintiff after receiving the balance sale consideration, and the defendants be also directed to handover the vacant possession of the land in question to the plaintiff and a decree for possession be also passed in favour of the plaintiff and against the defendants and in case, the defendants fail to abide the Court orders, the sale .deed in respect of the land in question be executed in favour of the plaintiff or in the name of person of his choice by way of deputing a Court official, as per law. A decree for declaration may kindly also be passed in

favour of the plaintiff and against the defendants by way of declaring the legal notice issued by the defendants to the plaintiffs on 01.06.2016 through Advocate Sh. Ashwani Sharma as illegal, null and void and not binding on the rights of the plaintiff. In case or due to any reason, the relief of possession by way of specific performance is declined, in that eventuality, the plaintiffs request for alternative relief of recovery of Rs.36,31,250/- along with damages of similar amount, and costs incurred along with interest @ 24% per annum on the above mentioned amount may kindly be passed in favour of the plaintiff against the defendants with costs to meet the ends of justice Costs of the suit together with any relief which this Hon'ble Court may deem fit and proper in the given circumstances of the case, be also passed in favour of the plaintiff and against the defendants, in the interest of justice.”

5. In the joint written statement dated 21.01.2018 filed by the defendants in the civil suit, the execution of agreement to sell at the rate of Rs.1 crore per acre and the total sale consideration as Rs.3,63,12,500/- was admitted by the defendants, but, it was pleaded that each and every page of the agreement to sell was never signed by them and they were always ready and willing to perform their part of the contract. Requisite corrections in respect to the mutation No.6022 were also completed on 25.11.2015 itself, vide badar No.14 and the plaintiff never came to the defendants with the requisite amount of fees, to obtain the NOC from the concerned department.

6. Moreover, there was no such requirement under the Rules of the Town and Country Planning Department to obtain NOC and, in fact, it was upon the defendants, who were always interested or willing to perform their part of the contract. Defendants also categorically pleaded that notices were sent to the plaintiff and even same were published by way of public notice in a Hindi daily

newspaper “**Viraat Vaibhav**” published from New Delhi. Firstly, two notices dated 09.05.2016 and 01.06.2016 were sent to the plaintiff to awaken him to perform his part of contract by paying the balance sale consideration, to the defendants followed by a public notice published in Hindi daily newspaper “**Viraat Vaibha**” on 10.06.2016. However, on failure of the plaintiff to perform his part of the contract the defendants were constrained to issue legal notice dated 01.07.2016 to the defendants, declaring the agreement to sell as cancelled and rescinded, and said legal notice was brought to the knowledge of General Public by way of publication dated 12.07.2016 in Hindi daily newspaper “**Viraat Vaibhav**” and with all these facts, the written statement was filed by the defendants.

7. A noticeable part in the written statement dated 21.01.2018, is that there is a specific mention of all the legal notices for warning as well as rescinding the agreement to sell in question and making publications of the same in the newspaper on 10.06.2016 and 12.07.2016.

From the pleaded facts in the plaint and written statement, details of notices and publications are as under:

- i) Legal notice dated 09.05.2016 sent by the defendants to plaintiff;
- ii) Legal notice dated 01.06.2016 (publication of this notice in Hindi daily newspaper “**Viraat Vaibhav**” dated 10.06.2016);

iii) Legal notice dated 01.07.2016 (publication of this notice in Hindi daily newspaper “Viraat Vaibhav” dated 12.07.2016)

8. After framing of the issues, both the parties led their respective evidence. However, at the stage of rebuttal evidence, the plaintiff filed one application for introducing some amendment in the plaint vide application dated 27.07.2022.

For the purpose of convenience, the complete contents of the application alongwith its prayer are reproduced hereunder:

“ The applicant/plaintiff most humbly and respectfully submits as under:-

1. That the above noted case is pending before this Hon'ble court and the same is fixed for today for rebuttal and arguments.

2. That the defendant in their written statement alleged that they served legal notice dated 09.05.2016 and legal notice dated 01.07.2016 and also made publication with regard to agreement in question in news paper namely Virat Vaibhav on dated 10.06.2016 and 12.07.2016. Though the plaintiff never received the legal notices dated 09.05.2016 and 01.07.2016 and never heard about the news paper namely Virat Vaibhav and never saw the publication made by the counsel of the defendants in this news paper on 10.06.2016 and 12.07.2016, but keeping in view the averments with regard to these documents it has become necessary for the plaintiff to make amendment in the prayer clause of the plaint by way of seeking declaration against the defendants by way of declaring these notices and publication in news paper as illegal, null and void and not binding on the rights of the plaintiff.

3. That the plaintiff mentioned the following para in the prayer clause:

A decree for declaration may kindly also be passed in favour of the plaintiff and against the defendants by way of declaring the legal notice issued by the

defendants to the plaintiff on 01.06.2016 through advocate Sh. Ashwani Sharma as illegal, null and void and not binding on the rights of the plaintiff.

4. *That now in view of the above submissions, the plaintiff wants to amend the above para in the following manner:-*

“ A decree for declaration may kindly also be passed in favour of the plaintiff and against the defendants by way of declaring the legal notices issued by the defendants to the plaintiff on 09.05.2016, 01.06.2016 and 01.07.2016 through advocate Sh. Ashwani Sharma and publication of dated 10.06.2016 and 12.07.2016 got published by the counsel of the defendants in news paper Virat Vaibhav as illegal, null and void and not binding on the rights of the plaintiff.”

5. *That the above said amendment is necessary for the proper adjudication of the case and there is no malafide intention on the part of the applicant/plaintiff. The said amendment is very much necessary and the prayer clause is liable to be corrected in the manner mentioned above, which shall neither change the nature of the suit, nor shall prejudice to the defendants.*

6. *That all the facts have come to the knowledge to the plaintiff during the pendency of the present suit and for that it is necessary to seek the relief of declaration of the above mentioned documents also in the manner as mentioned above. So, the amendment in the prayer clause of suit is necessary for the proper adjudication of the case. The applicant/plaintiff does not want to lead any fresh evidence, if the above said amendment is allowed.*

7. *That if the present application is not allowed in that event the applicant/plaintiff would suffer an irreparable loss and injury, which cannot be compensated in any manner.*

It is, therefore, prayed that the applicant/plaintiff may kindly be allowed to amend the plaint mentioned in the application for the proper adjudication of the case, in the interest of justice.”

9. In the reply submitted by the defendants to the aforesaid application, it was pleaded that factum of publication of legal notices

dated 09.05.2016 and 01.07.2016 in a Hindi daily newspaper “**Viraat Vaibhav**” had been disclosed in the written statement itself. Thus, counsel for the respondents (defendants) argues that as a matter of fact, plaintiff was well aware of the service of notices upon him even prior to the filing of the present suit. Therefore, wrong facts have been pleaded in the application merely for the purpose to fill up lacunae in the plaint. The relevant part of the reply is reproduced as under:

“2. That the contents of para No.2 of the application as stated are wrong to the extent that the fact of the service of publication of legal notices dated 09.05.2016 and 01.07.2016 in a Newspaper Virat Vaibhav was first disclosed in the written statement filed by the answering defendants in the present suit. The fact of the matter is that the applicant/plaintiff was very much aware of the service of the notices upon him even prior to the filing of the present suit. The applicant/plaintiff has put forward the wrong facts to mislead this Hon'ble court.

3. That the contents of para No.3 of the application are matter of record.

4. That the contents of para No.4 of the application are wrong and hence denied. The applicant/plaintiff is trying to cover up the lapses and lacuna in his suit under the guise of present application, which does not deserve to be allowed. The applicant/plaintiff was very much aware of the fact of the above mentioned notices prior to the filing of the present suit.

5. That the contents of Para No.5 of the application are wrong and hence denied. it is absolutely wrong to state that the alleged amendment is necessary.

6. That the contents of para No.6 of the application are wrong and hence denied.

7. That the contents of para No.7 of the application are wrong and hence denied. It is absolute wrong to state that the applicant/plaintiff is going to suffer an irreparable loss in case the application is not allowed. At the risk of repetition, it is respectfully stated that the applicant/plaintiff is trying to cover up the lapses and

lacuna in his case by way of filing of present application on false grounds.

The prayer clause of the application is wrong and hence denied.

It is, therefore, prayed that the application of the applicant/plaintiff may kindly be dismissed with heavy costs, in the interest of justice.”

10. Having considered the application and while rejecting the prayer made by the plaintiff/petitioner, learned Additional Civil Judge (Senior Division), Sonapat vide its order dated 08.05.2023 observed that application under Order VI Rule 17 C.P.C, 1908 for the amendment purpose cannot be allowed after the commencement of the trial. Moreover, there was lack of due diligence because after the pleadings, issues were framed on 10.10.2018 and evidence had been concluded by both the parties. Thus, it is at the fag end i.e. at the stage of rebuttal, the present application for amendment in the plaint has been instituted by the plaintiff.

11. With the aforementioned backdrop of the facts in the litigation, the plaintiff/Petitioner has filed the present revision petition before this Court by way of impugning the order dated 08.05.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Sonapat.

Arguments advanced by counsel for the petitioner:

12. At the very outset, counsel for the petitioner/plaintiff submits that basic prayer in the suit is for the issuance of a decree by way of specific performance and challenge to the legal notice dated 01.06.2016, same being illegal, null, and void and not binding on the

rights of the plaintiff. Thus, by way of moving an application for amendment, plaintiff is not introducing any new fact to change the nature of the suit, by way of either pleadings therein or the prayer therein. Once, status in law of the legal notice dated 01.06.2016 is in question before this Court, by adding the legal notice dated 09.05.2016 and 01.07.2016 alongwith publications dated 10.06.2016 and 12.07.2016, no new fact is being introduced in the pleadings already led by the plaintiff. Moreover, the nature of the fact already under challenge i.e. the legal notice dated 01.06.2016 is one and the same as the legal notice dated 09.05.2016 and 01.07.2016, which were got published for the knowledge of the general public.

13. Mr. Akshay Bhan, Senior Advocate for the petitioner further argued that, in fact, by allowing the application, no prejudice will be caused to the defendants rather proposed amendment is necessary for determining the real question in controversy. While relying upon the landmark judgment of Hon'ble Apex Court, in the case of "Life Insurance Corporation of India v. Sanjeev Builders Private Limited", 2023 (1) R.C.R (Civil) 851 : Law Finder Doc Id #2029338, learned Senior counsel submits that Court should not adopt a **hyper technical approach** for the purpose of considering and allowing the plea of amendment. In ordinary course, a liberal approach is required to be adopted. However, for the purpose of dismissal of such application, Courts must bear in mind the major factors i.e. allowing the application may not cause injustice to the other party; introduction of a time barred claim; prayer of amendment

being malafide or when the other side loses a valid defence; change in nature of suit.

14. Learned Senior counsel further submits that in the facts and circumstances of the present case, defendants are neither suffering any damage to their rights; nor there is any prejudice being caused in any manner. Rather, such amendment would be required for the Court purposes also to be equipped with all the concerned facts in regard to the real controversy already before the Court. In other words, learned Senior counsel submits that the amendment should be construed to bring on record some facts to complete the set of the facts for deciding the controversy, which is already pleaded before the (Ld. Civil) Court. Not mentioning of the proposed legal notices or public notices would not create a bar of Order II Rule 2 of C.P.C. as well as of *constructive res-judicata*. Basic principles enunciated by Hon'ble the Apex Court in paragraph No. 70 of the judgment of **Life Insurance Corporation of India (Supra)** are reproduced hereunder:

“70. Our final conclusions may be summed up thus:

(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 negated.

(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 certain 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. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)."

15. At last, the learned Senior counsel for the petitioner submits that for the purpose of counting the limitation in moving the application, Court would bear in mind the helpless situation prevailing during the pandemic COVID-19 period i.e. for the year, 2020-21, whereby Hon'ble the Apex Court in **Suo Moto Writ Petition (C) No. 3 of 2020** clarified that period from 15.03.2020 till 28.02.2022 shall also stand excluded almost under all the claims under the laws. Thus, out of the total delay caused by the plaintiff in moving the application in question, a lenient view is required to be taken by reducing the total delay period to the extent of almost two years, i.e. the period up till 15.03.2020 to 28.02.2022.

Arguments advanced by counsel for respondents:

16. Mr. R.N. Lohan, learned counsel for the respondents submits that a plea of declaration in regard to a document beyond its limitation i.e. beyond the period of three years cannot be introduced in the pleadings of the already pending suit, because, the same would be barred with the law of limitation. Even as per the principle of law enumerated in the Order VII Rule 11 (d) of C.P.C., such application for amendment of the plaint would not be maintainable and a plea in that regard is worth to be rejected outrightly. Ld. Counsel also points out that the alleged amendment relates to the period of 09.05.2016 to 12.07.2016 (legal notices dated 09.05.2016, 10.06.2016 and 01.07.2016, publications dated 10.06.2016 and 12.07.2016), while the suit was instituted by the plaintiff on 12.03.2018.

17. Learned counsel for the respondents further argues that written statement had been filed on 21.01.2018 and application under Order VI Rule 17 was filed by the plaintiff on 27.07.2022, thus, plea of limitation to challenge the documents (legal notices and newspaper publications), had infact, expired by the month of July 2019. Thus, seeking declaration by way of amendment of same is suffering with the huge delay and is illegal, null and void and not binding on the rights of the plaintiff and challenge to the same is not maintainable, keeping in view of the principle of “suit barred by law” by virtue of Order VII Rule 11(d) CPC. Further submits that by allowing the amendment application, the rights of the defendants would get prejudiced, and thus, the application is worth to be dismissed outrightly. Order VII of the Code of Civil Procedure, 1908, defines the plaint. Order VII is reproduced hereunder:

“Order VII; plaint

Order VII Rule 1 to Rule 10 A and 10B;xxxxxx

Order VII Rule 11 (a) to (c);xxxxx

ORDER VII RULE 11(D); WHERE THE SUIT APPEARS FROM THE STATEMENT IN THE PLAINT TO BE BARRED BY ANY LAW;

Order VII Rule 11(e) and (f); xxxxxx

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

18. Learned counsel for the respondents relies upon the judgment of Hon'ble the Apex Court in the case of "A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation", AIR 1967 (SC) 96 : Law Finder Doc Id #109621. By referring the paragraph No.10 of the aforesaid judgment, learned counsel submits that plaintiff cannot legitimately claim the amendment, as he cannot claim that his rights will get prejudiced under the law, for which he was never entitled. For the sake of convenience, paragraph No. 10 of the judgment is reproduced as under:

"10. Now, how does the present case stand on these principles? Does the amendment introduce a new cause of action or a new case? We do not think it does. The suit was on the contract. It sought the interpretation of a clause in the contract only for a decision of the rights of the parties under it and for no other purpose. It was the contract which formed the cause of action on which the suit was based. The amendment seeks to introduce a claim based on the same cause of action, that is, the same contract. It introduces no new case of facts. Indeed the facts on which the money claim sought to be added is based are not in dispute. Even the amount of the claim now sought to be made by amendment, was mentioned in the plaint in stating the valuation of the suit for the purpose of jurisdiction. The respondent had notice of it. It is quite clear that the interpretation of the clause was sought only for quantifying the money claim. In the written statement the respondent specifically expressed its willingness to pay the appellant's legitimate dues which could only mean such amount as might be due according to the rates applicable on a proper interpretation of the clause. The respondent was fully aware that the ultimate object of the appellant in filing the suit was to obtain the payment of that amount. It was equally aware that the amount had not been specifically claimed in the suit because the respondent had led the appellant to believe that it would pay whatever the court legitimately found to be due. It in fact said so in the written statement. If there was any case where the

respondent was not entitled to the benefit of the law of limitation, the present is that one. The respondent cannot legitimately claim that the amendment will prejudicially affect his right under that law for really he had no such right. It is a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made.”

19. Learned Counsel also placed reliance on the judgment passed by a Co-ordinate Bench of this Court in the case of “Jasbir Singh v. Amrik Singh” (CR No. 2033 of 2016, decided on 24.07.2019), and argued that in the said case it has been held that the claim which had already become time barred, the same cannot be allowed to be inserted by way of amendment.

Also relies upon the decision of Hon’ble the Apex Court in the case of “Ramesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd. and others”, 2012 (2) R.C.R (Civil) 739 : Law Finder Doc Id # 350229, and while referring to paragraph No. 10 submits that amendment should not be allowed as a general rule if a fresh suit on the amended claims would be barred by limitation on the date of application. The said paragraph No.10 is reproduced herebelow:

“10. In Revajeetu Builders & Developers v. Narayanaswamy & Sons & Ors. 2010(1) RCR (Civil) 27: 2009(6) R.A.J. 521: 2009(2) RCR (Rent) 568: (2009) 10 SCC 84, this Court once again considered the scope of amendment of pleadings. In paragraph 63, it concluded as follows: "Factors to be taken into consideration while dealing with applications for amendments 63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

20. Learned counsel also relies upon paragraph No. 8 of the judgment of this Court (Punjab and Haryana High Court) in the case of “Jagdev Singh v. Gursewak Singh”, 2015 (9) R.C.R. (Civil) 895 :

Law Finder Doc ID #707760, which reads as under:

“8. The undisputed facts available on record in the present case are that agreement to sell is dated 28.5.2007. The last date for execution of the sale deed was 30.11.2007. Initially, suit for recovery of earnest money along with damages was filed on 14.1.2008. The application for amendment of the plaint was moved on 18.3.2011 seeking to claim the relief of possession by way of specific performance of agreement to sell dated 28.5.2007. In terms of Article 54 of the Limitation Act, a suit for specific performance could be filed within 3 years from the date fixed for performance. Three years in the present case expired on 29.11.2010. By way of amendment, nature of the suit was sought to be changed to recover possession by way of specific performance of agreement to sell. If an independent suit is filed on the date the application for amendment was filed, the same would have been clearly time-barred. Once that is so, the court below has committed grave error in permitting the respondent-plaintiff to amend the suit by permitting him to add the relief of possession by way of specific

performance of agreement to sell, which was a time-barred claim.”

21. Before proceeding further, it is required to mention here that after hearing the counsel from both the sides, the judgment was reserved on 04.09.2023. At the time of dictation of the judgment, I realized the necessity to go through all the legal notices and the publications made in daily Hindi newspaper “**Viraat Vaibhav**”. However, said notices and publications were not available on the record of the present revision petition, therefore, again revision petition was fixed for 28.09.2023 for the purpose of re-hearing, but on 28.09.2023, the matter could not be heard on account of a call given by the Executive Committee of the Punjab and Haryana High Court Bar Association, & members of the Bar abstained from work. Thereafter again, matter was adjourned to 03.10.2023 for its hearing and was ordered to be shown in the list of urgent cases and counsel for the parties were also informed in advance to be present in Court for the purpose of assistance and to provide all the relevant documents.

Resultantly, on 03.10.2023, at the time of hearing, learned counsel for the respondent produced photocopies of all the legal notices and the publications made in the daily Hindi newspaper “**Viraat Vaibhav**”. All the five documents were taken on record and thereafter, averments mentioned therein have been examined deeply, alongwith intent of the sender of legal notices.

This way, apart the documents appended with the petition, all the legal notices i.e. 09.05.2016, 01.06.2016 &

01.07.2016, and publications dated 10.06.2016 & 12.07.2016 are made part of the record of the present revision petition. Necessity to go through the said documents is more required, because notices and publications, probably have not been brought on the record, even before the trial Court.

Thereafter, on 03.10.2023, learned counsel for the parties were heard and matter was again reserved for its decision by this Court.

22. Now to decide the question of introducing the factum of challenging the two legal notices and the consequential publications by way of amendment in the plaint, it would be just and relevant to highlight the effect of already sought relief and the facts therein.

From the bare perusal of the prayer clause pleaded in the original plaint, it is clear that declaration to the effect that legal notice dated 01.06.2016 be declared as illegal, null, void and not binding against the rights of the plaintiff, has already been prayed. In fact, prior in time, there was one more legal notice dated 09.05.2016 issued by the defendants but same is never mentioned in the pleading part of the plaint. The relevant part in paragraph No. 10 of the legal notice dated 09.05.2016 is reproduced here under:-

“10. Through this legal notice, You are hereby called upon to perform your part of the contract by making payment of the balance sale consideration to my clients so that they are in a position execute and get the sale deed registered in your favour by getting all the requisite permissions and NOC at your expenses, within a period of fifteen days of receipt of this legal notice, failing which my clients will be constrained to initiate legal proceedings against you and in that eventuality you shall

be liable for all the consequences and the expenses incurred by my clients.”

23. Paragraph No.10 of the legal notice dated 01.06.2016 is reproduced here under:

“10. Through this legal notice, You are again hereby called upon to perform your part of the contract by making payment of the balance sale consideration to my clients so that they are in a position to execute and get the sale deed registered in your favour by getting all the requisite permissions and NOC at in your expenses, within a period of fifteen days of receipt of this legal notice, failing which my clients shall be constrained to rescind the agreement to sell and you shall have no claim, interest of or title, whatsoever, to the agricultural land mentioned in the said agreement.”

Publication dated 10.06.2016 in daily newspaper “Viraat Vaibhav” was with the aim to publicize legal notice dated 01.06.2016, with the effect that in case, no registration is done by making the balance payment within a period of 15 days of publication of the notice, there won't be any option with the defendants other than the canceling/rescinding of aforementioned sale agreement dated 19.10.2015.

24. Thereafter, legal notice dated 01.07.2016 was sent by the defendants to the plaintiff, stating therein that due to failure of the plaintiff to perform his part of the contract, the agreement to sell dated 19.10.2015 stands canceled/rescinded. Relevant paragraph Nos. 9 and 10 of the legal notice dated 01.07.2016, issued by the defendants, are reproduced hereunder:

“9. That legal notice dated 09.05.2016, 01.06.2016 on behalf of my clients and were sent to you and the attesting witnesses by registered post and a notice was

also got published in Hindi Newspaper "Virat Vaibhav" on 10.06.2016 wherein you were requested to come present to perform your part of the contract by making the payment of the balance sale consideration and getting the sale deed registered in your name. But despite all these notices and publication, you are deliberately avoiding to perform your part of the Contract whereas my clients have always been ready and willing to perform their part of the contract.

10. Through this legal notice, You are hereby informed that my clients have cancelled and rescinded the agreement to sell dated 19.10.2015 as you have failed to perform your part of the contract by making payment of the balance sale consideration to my clients despite repeated notices, correspondence and intimations. You have ceased to have any kind of interest in the property under reference. You are also advised not to deal with any person with regard to the above-mentioned property of my clients. Please note that my clients are **again getting a public notice published in newspaper in respect of cancellation and rescinding of the agreement under reference for the information of one and all.**"

25. In the publication dated 12.07.2016, in daily newspaper "Viraat Vaibhav", said legal notice dated 01.07.2017 was published for the general public that the defendants have cancelled the sale agreement dated 19.10.2015 and no one should enter into any deal with aforementioned plaintiff-Mohan Chauhan in regard to the aforementioned land and the defendants would not be liable for any such deal.

26. I have gone through the legal notice dated 09.05.2016. By way of this notice, plaintiff has been apprised/awakened to perform his part of contract for the purpose of sale and its registration. Second notice dated 01.06.2016 is also to apprise/awaken the plaintiff to perform his part of contract, failing which agreement to sell would be cancelled/rescinded. The said notice was also got published with

almost same view point for the general public vide publication dated 10.06.2016 in daily Hindi newspaper “**Viraat Vaibhav**”.

At last, legal notice dated 01.07.2016 was issued to the plaintiff by saying that on account of not fulfilling the terms of the agreement to sell, same stands cancelled/rescinded. Subsequently, said decision, taken by the defendants was brought to the notice of the general public also through publication dated 12.07.2016 in daily Hindi newspaper “**Viraat Vaibhav**”. With this publication, public was also apprised of not entering into any deal with the plaintiff qua land in question.

27. After going through the judgments relied upon by both the sides in support of their respective submissions, this Court has applied its mind in depth, basically with an idea to examine whether the claim, now sought to be introduced by way of the proposed amendment in the plaint would change entirely the nature of the suit or the relief claimed by the plaintiff. For the said purpose, all the judgments are gone into with the help of law researchers attached with me, namely, Akinchan Aggarwal and Ipshita Arora.

Undoubtedly, already there are two challenges made by the plaintiff in his plaint **i.e. (i)** decree of possession by way of specific performance; **(ii)** Challenge to the legal notice dated 01.06.2016 same being illegal, null, void and not binding against the rights of the plaintiff.

28. In other words, the legal notice sought to be added by way of amendment in the plaint, is in regard to the challenge to the

decision of rescinding of agreement to sell and its publication for the knowledge of the General Public.

In the legal notice dated 01.07.2016, defendants has conveyed their decision of cancelling and rescinding of the agreement to sell dated 19.10.2015 and also instructs the plaintiff to not to enter into any deal with any other person. Lastly said decision was got published in the daily Hindi newspaper “Virat Vaibhav” for the acknowledgment of the decision of the defendants for general public vide publication dated 12.07.2016.

For the purpose of clarity, content of legal notices issued prior to the notice dated 01.07.2016, are required to be understood -

- (a) Legal notice dated 09.05.2016 is nothing but reminding the plaintiff to perform his part of contract. There is nothing mentioned about the consequence or the factum of rescinding the agreement to sell in question.
- (b) As far as the legal notice 01.06.2016 is concerned it talks about the demand of performing the part of contract at the instance of the plaintiff/buyer failing which defendants are awakening the plaintiff that the agreement to sell shall be rescinded and same fact is mentioned in the publication dated 10.06.2016.

29. Undoubtedly, the decision of cancellation and rescinding of the agreement to sell dated 19.10.2015 has been communicated by defendants to the plaintiff through their counsel for the first time, vide legal notice dated 01.07.2016, and same was got published on

12.07.2016 in the daily Hindi newspaper “**Viraat Vaibhav**”. The said fact is incorporated in the written statement also.

Thus, now submission of the plaintiff (petitioner herein) that factum of the legal notice and publication was not in his knowledge is not sustainable because the plaintiff is supposed to be in knowledge of this fact just after going through the written statement, which had been filed by the defendants on 21.08.2018 and limitation period of three years for filing a suit for declaration to challenge such legal notice dated 01.07.2016 and publication dated 12.07.2016 also expired in the year 2019. Thus, technically speaking, plea of seeking declaration for nullity of legal notice dated 01.07.2016 and publication dated 12.07.2016 is beyond the period of limitation and already challenged legal notice dated 01.06.2016, which is similar to the legal notice dated 09.05.2016 is of no consequence because no final decision of cancellation or rescinding of agreement to sell has been conveyed by the defendants to the plaintiff vide these notices.

30. Despite, the amendment sought by the plaintiff being time barred, this Court is further examining the consequence of allowing and disallowing of the prayer. Applying the principles laid down by Hon'ble the Apex Court in the case of **Life Insurance Corporation of India's case (supra)**, which have been relied upon by learned counsel for the plaintiff (petitioner herein), this Court finds that first and foremost issue before the learned trial Court is to give finding in regard to the issues framed before it and undoubtedly, the

one and foremost issue is *whether the terms of the agreement to sell has/have been violated and if so, by which side.*

31. In case, the suit is decreed in favour of the plaintiff, there would be finding recorded under the law that the fault lies in the action/inaction of the defendants. In the present case also, the third notice dated 01.07.2016 and its publication dated 12.07.2016 is after the date fixed for the registration of the sale deed by making balance payment to the defendants. In the present case the target dated is 15.04.2016 to get the sale deed executed and registered in favour of the plaintiff by the defendants. Therefore, issuance of legal notice dated 01.07.2016 or any other notice after the last date for fulfilling the terms and conditions, would be of no consequence, if the suit is found worth for its decretal on account of the reason that plaintiff has fulfilled all the terms and conditions within time limit mentioned in the agreement to sell.

Taking hypothetical situation, this Court also assumes that if plaintiff is not found at fault, no option would be left with the Court to either decree the suit in its entirety or to grant any other relief available to the plaintiff under the Specific Relief Act.

32. Therefore, taking into consideration, the facts of present case, decision of rescinding of the agreement to sell after its target date would be of no consequence for the defendants to come out of the agreement to sell by saying that they had conveyed the decision of rescinding from the agreement through legal notice dated 01.07.2016 and publication dated 12.07.2016.

Had this legal notice been issued for cancellation/rescinding of the agreement to sell prior to the target date/date for registration of the sale deed, with any plausible reason, challenge to such legal notice by way of seeking amendment, could have been examined with more caution.

33. Thus, in the totality of the circumstances and applying the principles made in paragraph No. 70 of the judgment of Hon'ble Apex Court in *Life Insurance Corporation of India's case (supra)*, as reproduced in paragraph No. 14 of the present judgment, I hereby deem it appropriate to set aside the impugned order dated 08.05.2023 (Annexure P-5) and allow the present revision petition. The same would be subject to the payment of costs of Rs.25,000/-, which would be payable to the respondents/defendants by the plaintiff at the time of filing of the amended plaint before learned trial Court.

Consequently, plaintiff (petitioner herein) would file his amended plaint before learned trial Court uptill 20.11.2023 and learned trial Court would proceed further in accordance with law. Before parting with the judgment, I hereby direct learned trial Court to expedite the proceedings of the suit for its final decision.

(SANJAY VASHISTH)
JUDGE

October 31, 2023
rashmi/Pkapoor

Whether speaking/reasoned
Whether reportable?

✓Yes/No
✓Yes/No