

CR-4184-2019 (O&M)

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

CR-4184-2019 (O&M)

Reserved on : 29.05.2023

Date of Decision : 02.06.2023

M/s RMS Estate Pvt. Ltd.

....Petitioner

VERSUS

Lakhmi

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Umesh Aggarwal, Advocate for the petitioner.

Ms. Pratibha Yadav, Advocate for the respondent.

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ALKA SARIN, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 01.04.2019 whereby the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) filed by the plaintiff-petitioner for amendment of the plaint has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for injunction and other connected reliefs. The prayer made in the plaint reads as under :

“14. That the plaintiff prays for the following reliefs :

[A] That a decree of prohibitory injunction may kindly be passed in favour of plaintiff and against the defendant, his

heirs, attorneys, agents, representatives and assigns thereby directing them not to disturb or abridges with the exclusive rights of the plaintiff to enjoy the property the site in accordance with law and should also remain desist to disturb actual physical possession of the plaintiff in immovable properties situated of village Dharampur, District Gurgaon (Haryana) [detailed and described in para No.4 of the plaint to any other person except to the plaintiff or any other person authorized by the plaintiff.

[B] That decree of mandatory injunction may kindly be passed in favour of plaintiff company and against the defendant, his heirs, thereby directing him to furnish the NOC duly issued from HUDA and GAIL for his respective lands coupled with documents of his title in respective properties to enable the plaintiff to get the sale deeds in his favour.

[C] That besides the plaintiff shall be declared entitled to be indemnified by the defendant to the extent of all losses actually caused by the acts & conducts of the defendant on account of deal relating to properties first shown above situated in village Dharampur tehsil & Distt. Gurgaon.

[D] That the costs of the suit may be awarded.

[E] That any other relief which the court deem fit in favour of plaintiff may also be granted.”

3. The suit was filed on 05.05.2010. Thereafter, reply was filed by the defendant-respondent on 11.12.2014. On 29.07.2016 issues were framed and when the case was at the stage of evidence of the plaintiff-petitioner, the present application for amendment of the plaint was filed. By way of the amendment, the plaintiff-petitioner now sought a relief of specific performance of the agreement dated 06.07.2006. The amendments sought were mentioned in para No.5 of the amendment application which reads as under :

“5. That in view of the above, the plaintiff wants to amend the suit in the following manner :

1. That the plaintiff wants to amend the title of the suit and wants to insert “Specific performance of the contract” before the word injunction.

2. That the plaintiff seeks to insert following para No.6A in the plaint:-

“6A. That the plaintiff had always been ready and willing and is still ready and willing to perform its part of the contract. The plaintiff had always and is still having sufficient fund to pay the balance consideration, stamp and registration charges and other incidental charges at all relevant times, but the defendant never come forward to perform their part of contract and never obtained NOC’s as detailed in the terms and conditions of the agreement.”

3. That the plaintiff wants to amend para No.12 of the plaint as under:-

“12. That the present suit is valued at Rs.3,44,48,750/- (Rupees Three Crore Forty Four Lac Forty Eight Thousand Seven Hundred Fifty only.) and ad-voleram court fees and jurisdiction as assessed at Rs.15,48,700/- (Rupees Fifteen Lac Forty Eight Thousand Seven Hundred Only) which is annexed with the plaint.

4. That the plaintiff wants to amend prayer clause of the plaint i.e. Para No.13 and wants to insert a new sub para A1 before sub para No.1 as under:-

“A1. That a decree for specific performance of the agreement dated 06.07.2006 directing the defendant to execute and register the sale deed in respect of the land in question in favour of the plaintiff as detailed in the plaint above, after receiving the balance sale consideration and further hand over the legal possession of the land in question, in case the defendants fails to get the sale deed executed and registered in favour of the plaintiff then the same be got executed and registered by appointing a local commissioner through the process of court.”

4. The application was contested by the defendant-respondent and vide the impugned order dated 01.04.2019 the amendment application was dismissed. Aggrieved by the same, the present revision petition has been filed.

5. This Court while issuing notice of motion on 10.07.2019 stayed the passing of the final order. However, the Trial Court was directed to continue with the trial. As of today, the case is at the stage of rebuttal and arguments.

6. Learned counsel for the plaintiff-petitioner would contend that the amendment is necessary in view of the fact that the defendant-respondent kept assuring the plaintiff-petitioner that he would get the 'No Objection Certificate' (NOC) and, therefore, the suit for specific performance was not filed. It is further the contention of the counsel that the averments regarding the direction of execution of sale deed are already there in the plaint. It is submitted that no further evidence would be required in this regard as the plaintiff-petitioner has already led his evidence qua readiness and willingness as also for proving the agreement to sell dated 06.07.2006. It is further the contention that the nature of the suit is not going to change. In support of his contentions, learned counsel has relied upon **Pankaja & Anr. Vs. Yellappa (D) by LRs & Ors [2004 (3) RCR (Civil) 723]**, **Ragu Thilak D. John Vs. S. Rayappan [2001 (1) RCR (Civil) 726]**, **Puran Ram Vs. Bhaguram & Anr. [2008 (2) RCR (Civil) 499]**, **Abdul Rehaman & Anr. Vs. Mohd. Ruldu & Ors. [2012 (4) RCR (Civil) 481]** and **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. [2022 SCC online SC 1128]**.

7. *Per contra*, learned counsel for the defendant-respondent has stated that the application itself is totally bereft of any reasoning as to why the suit for specific performance was not filed at the outset. Learned counsel for the defendant-respondent has further pointed out that in the application for amendment itself it has been mentioned in para No.5 that the plaintiff-petitioner kept making requests to the defendant-respondent to get the 'NOC' and then on

15.04.2010 informed the plaintiff-petitioner that he should obtain the 'NOC' and further told that he would be selling the land to someone else, therefore, the plaintiff-petitioner was immediately constrained to file a suit for injunction on 05.05.2010. It has been further contended that in case the plaintiff-petitioner was aware in 2010 itself that the defendant-respondent did not want to go ahead with the agreement to sell, the suit should have been filed for specific performance. In support of her arguments, learned counsel for the defendant-respondent has relied upon **Pandit Malhari Mahale Vs. Monika Pandit Mahale & Ors. [2020 (11) SCC 549]**, **Vidyabai & Ors. Vs. Padmalath & Anr. [2009 (1) RCR (Civil) 763]**, **Ajendraprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors. [2007 (1) RCR (Civil) 481]**, **South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors. [2008 (4) RCR (Civil) 513]** and **Chander Kanta Bansal Vs. Rajinder Singh Anand [2008 (2) RCR (Civil) 801]**.

8. I have heard learned counsel for the parties.

9. In the present case the plaintiff-petitioner initially filed a simplicitor suit for injunction and other connected reliefs. In para-12 of the plaint it has been stated as under :

“That the cause of action to present suit was firstly arising on 06.07.2006. And subsequently on various dates when the defendant has received the payments and finally on 15.04.2020, when the defendant refused to obtain any NOC from HUDA & GAIL and also to give any documents relating to their titles in the disputed properties shown & described in Agreement, within the jurisdiction of this

Court. Now the plaintiff has no option except to the file present suit to access its rights through equity.”

10. There is no reason forthcoming either in the amendment application nor brought out during arguments as to why a suit for specific performance was not filed at the outset. The argument of the counsel for the plaintiff-petitioner that since assurances were being given by the defendant-respondent that he will get the ‘NOC’ hence the suit for specific performance was not filed, cannot be accepted inasmuch as even at the stage of filing the suit for injunction it was known to the plaintiff-petitioner that the defendant-respondent was resiling from the agreement to sell dated 06.07.2006. The suit ought to have been filed for specific performance of the agreement to sell dated 06.07.2006. The amendment application is totally silent as to why the suit for specific performance could not be filed at an early stage. The application for amendment was filed in the year 2016 for specific performance of an agreement to sell dated 06.07.2006. The plaintiff-petitioner is now also seeking to introduce a time barred claim, which cannot be permitted in law. On a query by the Court as to how a time barred claim can now be introduced, counsel has contended that pleadings of readiness and willingness are already there in the plaint and further that the agreement to sell was never cancelled. Hence, the claim is not time barred. The said argument also cannot be accepted in view of the fact that the categoric case of the plaintiff-petitioner when the suit was filed was that the defendant-respondent was refusing to obtain ‘NOC’ from the authorities. Even as per the averments made in para 11 of the plaint, “*On 15/04/2010 the defendant has informed to the plaintiff that he is not in a position to deliver the NOC from HUDA & GAIL and he also informed that he*

would sold the property as & where basis to any third party after forfeiting the money paid by the plaintiff”. Thus, it was well within the knowledge of the plaintiff-petitioner that the defendant-respondent was resiling from the agreement to sell and hence the suit for specific performance ought to have been filed at the outset.

11. The judgment relied upon by the counsel for the plaintiff-petitioner in the case of **Pankaja** (supra) would not come to an aid to the plaintiff-petitioner inasmuch as in the said case their Lordships have held that where an arguable question arises regarding limitation, the amendment can be allowed by framing the necessary issue in the said regard. However, in the present case the counsel has not been able to convince this Court that the relief now being sought of specific performance is clearly not barred by limitation.

12 There can be no quarrel with the proposition of law as laid down in the cases of **Ragu Thilak D. John** (supra), **Puran Ram** (supra), **Abdul Rehaman** (supra) and **Life Insurance Corporation of India** (supra). However, the facts of each case need to be seen before allowing an amendment. In the present case the plaintiff-petitioner did not file the suit for specific performance despite the fact that as per his own averment he was aware that the defendant-respondent was threatening to sell the property to someone else. The Supreme Court in the case of **Life Insurance Corporation of India** (supra) has held as under :

“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 pinpointedly 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)”

13. Their Lordships of the Supreme Court have held that the amendment is to be allowed in case it does not raise a time barred claim resulting in divesting the other side of the valuable accrued right. In the present case not only is the amendment going to change the nature of the suit but would also introduce a time barred claim resulting in injustice to the other side.

14. In view of the above, I do not find any error of law or jurisdiction in the impugned order. There is no merit in the present revision petition which is dismissed. Pending applications, if any, also stand disposed off.

02.06.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No