

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

CR No.3496 of 2022 (O&M)

Date of Decision: 10.01.2023

Bhupinder Singh Chahal

...Petitioner

Versus

Narinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Arnav Sood, Advocate
for the petitioner.

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MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant petition, the petitioner (defendant No.1) has laid challenge to the order dated 28.07.2022 passed by learned Civil Judge (Junior Division), Hoshiarpur (for short 'the trial Court'), in Civil Suit No.1534 of 2016, whereby the application (Annexure P-6) moved by him for seeking the amendment in his counter-claim filed in the above-said Civil Suit, has been dismissed.

2. As per the brief factual-matrix culminating in the filing of the present revision petition, respondent No.1-plaintiff (for short 'the plaintiff') has filed the said Civil Suit against the petitioner and proforma-respondents No.2 to 7 for seeking the possession of the suit property, by way of its partition, after the removal of the super structure existing thereon. Along-with their written statement, the petitioner and proforma-respondent No.2-

defendant No.2 also filed their counter-claim in the said Suit for seeking the relief of mandatory injunction against the plaintiff and later-on, the petitioner moved the afore-said application for seeking amendment in the counter-claim for incorporating the relief of specific performance of the oral agreement therein instead of the relief of mandatory injunction and this application has been dismissed vide the impugned order.

3. Mr. Inderpreet Singh Kooner, Advocate, has put in appearance on behalf of respondent No.1-plaintiff in this petition and has submitted his Power of Attorney in the Court and the same is taken on the record.

4. I have heard learned counsel for the petitioner-defendant No.1 as well as learned counsel for respondent No.1-plaintiff in the instant revision petition and have also perused the file carefully.

5. Learned counsel for the petitioner contends that the proposed amendment would not change the nature of the counter-claim and moreover, the agreement between the parties, qua the sale of the suit property, was an oral one and no specific date had been stipulated for execution and registration of the sale-deed but however, the trial Court has erroneously observed in the impugned order that the claim qua the relief of specific performance of the said oral agreement, had become time-barred. He places reliance upon the observations made by the Co-ordinate Bench in **Smt. Sarvo and others versus Sunil Dewan and others, 2000(3) R.C.R. (Civil) 486**, in support of his contentions.

6. Per-contra, learned counsel for the plaintiff argues that in his replication and reply to the counter-claim, the plaintiff has specifically

denied the factum of any oral agreement to sell the suit property having been arrived at between the parties and of his having received the entire sale consideration as well and even otherwise, the petitioner did not ever issue/got issued any legal notice to the plaintiff asking him therein to execute the sale-deed in respect of the suit property and to get the same registered in pursuance of the alleged oral agreement.

7. The counter-claim Annexure P-4 bears the date as 22.09.2017 whereas application Annexure P-6 is dated 16.07.2022 and thus, it was moved almost five years after filing the counter-claim and that too, when, undisputedly, the said Civil Suit had reached the stage of recording the evidence of the defendants, meaning thereby that the trial in the Suit had commenced much prior thereto. However, throughout in his application, the petitioner has not come forward with any fair, candid and plausible explanation for not claiming the relief of specific performance while filing the counter-claim initially, as he must be aware of the said oral agreement at that time also nor he has pleaded therein that he could not do so despite exercising the due diligence. Hon'ble the Supreme Court has observed in **Rajkumar Gurawara (dead) through LRs vs. S.K. Sarwagi and Co. Pvt. Ltd and Another 2007(14) SCC 556** that “where in spite of reply notice and specific plea taken in the written statement, the plaintiff did not choose to take steps to get the plaint amended suitably and he came up with the application under Order VI Rule 17 CPC at the stage of the arguments, his action could not be permitted”. These observations are fully applicable to the present petition and in the light of the same, it becomes explicit that the

trial Court has rightly rejected the above-said application.

8. Further, even if for the sake of arguments, it is presumed that no specific date had been agreed for the execution and registration of the sale deed, even then, the fact remains that the petitioner has not placed any document on the file, at this stage, to show that he had ever sent any legal notice to the plaintiff asking him therein for the execution and registration of the sale-deed qua the suit property and that the plaintiff had refused for the same, so as to ascertain the date of the beginning of the prescribed period of limitation for claiming the relief of specific performance. The verdict handed down by the Co-ordinate Bench in **Smt. Sarvo and others (Supra)**, would not help the petitioner in view of the observations made by the Apex Court in **Rajkumar Gurawara (dead) through LRs (Supra)**.

9. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

10. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the Civil Suit pending between the parties in the trial Court.

10.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*