

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

134

CR-4638-2023

Date of Decision:17.08.2023

Vikas Taneja

....Petitioner

Versus

Major Ajay Pal Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Aditya Dassaur, Advocate for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed by the defendant challenging the order dated 02.08.2023, whereby application for amending the issue has been partly dismissed.

2. Learned counsel for the petitioner submits that initially on 10.08.2015, learned trial Court framed the following five issues:

'1. Whether the plaintiff is in possession by way of Specific Performance of agreement to sell dated 30.4.2012?OPP.

2. Whether the plaintiff is entitled to recover R.72,00,000/- alongwith interest as alternative relief as prayed for?OPP.

3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP 2)

4. Whether the plaintiff has no locus standi to file the present suit?OPD

5. Whether the plaintiff has not come to the Court with clean hands?OPD

6. Relief.

No other issue arises or pressed. Now to come up on 29.9.2015 for evidence of the plaintiff Pws be summoned on filing of list of witnesses/PF/DM.'

3. At the stage of rebuttal evidence , application dated

29.05.2023 is moved by defendant under Order XIV Rule 5 read with Section 151 CPC for the purpose of framing the additional issues. The defendant proposed the following three issues to be framed:

'a). Whether at the time of execution of agreement to sell dated 30.4.2012, the plaintiff paid Rs.30 Lacs to defendant as earnest money. OPP

b). Whether the plaintiff paid Rs.6 Lacs to the defendant vide two endorsements dated 17.8.2012 and 3.12.2012 as pleaded in the plaint. OPP

c). Whether the plaintiff has always been ready and willing to perform his part of the contract. OPP '

4. After considering the submissions, learned trial Court has re-framed the issues vide order dated 02.08.2023 and the same are reproduced here below:

'1. Whether the plaintiff is entitled for possession by way of specific performance of agreement for sell dated 30.04.2012? OPP

2. In alternative, whether, the plaintiff is entitled for recovery of Rs.72,00,000/- along-with interest? OPP

3 Whether, the plaintiff was always ready and willing and still ready and willing to perform his part of contract? OPP

4. Whether, the plaintiff is entitled for Permanent Injunction? OPP

5. Whether, the plaintiff has not come to the Court with clean hands? OPD

6. Whether, the plaintiff has no locus standi to file the present suit? OPD

7. Relief.'

5. It is noticed by the Court that first issue has been re-framed by the trial Court and issue regarding readiness and willingness as proposed by the defendant has also been incorporated.

The same are reproduced here below:

“a).Whether at the time of execution of agreement to sell dated 30.4.2012, the plaintiff paid Rs.30 Lacs to defendant as earnest money.

OPP

b). Whether the plaintiff paid Rs.6 Lacs to the defendant vide two endorsements dated 17.8.2012 and 3.12.2012 as pleaded in the plaint.

OPP”

6. Heard, learned counsel for the petitioner and perused the complete paper-book and record available.

7. Considering the aspect that under Order XIV issues are framed and under Rule 5 Power to amend and strike out issues is there with the Court. Order XIV Rule 5 of CPC is as under:

***'5. Power to amend and strike out issues.-(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.
(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.]'***

8. As per settled law, it is clear that for the suit filed by the plaintiff onus to prove the issues No. 1 and 2, would be upon the plaintiff to prove the same. Thus, onus of proving the payment made for seeking possession by way of specific performance, is on the plaintiff and proposed issues by the defendants are immaterial. Rather, same would be covered under the issues already framed by the Court.

For discharging the burden, the defendant is required to lead his own evidence, to prove the defence pleaded by him against the claim raised by the plaintiff.

This Court does not find any merit in the present revision petition, the same stands dismissed.

[SANJAY VASHISTH]
JUDGE

August 17, 2023
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Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no