

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

CR-6427-2023

Date of Decision: 30.10.2023

Tulsi Ram

...Petitioner

Versus

Gurinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rai Singh Chauhan, Advocate and
Ms. Deepika Chauhan, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 01.07.2023 (Annexure P-6) passed by the Ld. Civil Judge (Sr. Division), Pathankot vide which an application moved by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

2. In brief, facts as culled out from the plaint (Annexure P-1) are that the petitioner/plaintiff has filed a suit for mandatory injunction directing the respondent/defendant to return the earnest money of Rs.6 lakhs as per terms and conditions of the agreement dated 18.04.2006 executed by the respondent in respect of the land measuring 20 kanal 6 marlas situated in the revenue estate of village Karoli, H. B.374, Tehsil and District Pathankot.

3. Learned counsel for the petitioner *inter alia* submits that respondent/defendant executed a sale deed which was initially agreed to be executed on 18.06.2006 and later on date was extended to 19.06.2006. Firstly, the respondent/defendant impleaded the petitioner in FIR No.56 dated 08.07.2007 under Section 419 IPC, registered at Police Station Division No.1,

Pathankot and the petitioner has already been acquitted on 05.11.2011 and appeal filed by the petitioner/defendant had already been dismissed on 04.06.2014. The suit has been filed for return of the earnest money as well as damages along with interest. The suit was dismissed in default vide order dated 18.10.2016 and the application for restoration was rejected vide order dated 05.09.2019 against which the appeal was preferred and the same was accepted vide order dated 27.10.2021. During the pendency of the suit, the petitioner moved an application under Order 6 Rule 17 CPC for amendment of the plaint for including additional relief of specific performance of the agreement and in the alternative for recovery of earnest money (Annexure P-2 and P-3) and respondent filed the reply and written statement ((Annexure P-4 and P-5). The learned trial Court dismissed the application and aggrieved with the said order the present revision petition has been filed.

4. The petitioner has argued that criminal case was finally adjudicated on 05.11.2011 and appeal filed by the respondent/defendant against the order of acquittal has been dismissed on 04.06.2014. The suit was filed in the year 2016 which was after a period of 3 years. The learned trial Court has wrongly dismissed the application being barred by limitation. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in case **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2023(1) RCR (Civil) 851.**

5. I have heard the submissions of learned counsel for the petitioner and gone through the paper-book.

6. The petitioner had filed the suit for mandatory injunction for recovery of the sum of Rs.6 lakh as per terms and conditions of the agreement dated 18.04.2006 which includes sum of Rs.3 lakh as earnest money and Rs.3

lakh as damages along with interest. As per version of the petitioner/plaintiff, the date for execution of sale deed was extended up to 19.06.2006 and Court below dismissed the application for amendment on the ground that suit for specific performance could be filed within a period of 3 years from the date fixed for execution of the sale deed. Learned counsel for the petitioner has placed reliance upon the judgment *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another (supra)*. It is held in this case that prayer for amendment is to be allowed if the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right. Thus, when amendment is sought to include the time barred claim then amendment cannot be allowed. Since the proposed amendment is to include time barred claim and such amendment cannot be allowed so there is no illegality in the order passed by trial Court.

7. Accordingly, the present revision petition stands dismissed.

30.10.2023
Parveen kumar

(GURBIR SINGH)
JUDGE

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