

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2828 of 2017 (O&M)

**Reserved On: 19.12.2023
Pronounced On: 01.01.2024**

Baljeet Singh (Deceased) through his Legal Representatives
... Petitioner(s)

Versus

M/s Elite Realtech Private Limited
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shiv Kumar, Advocate
for the petitioner(s).

Mr. Adarsh Jain, Advocate
for the respondent.

Anil Kshetarpal, J.

1. Through this revision petition, the defendants assail the correctness of the orders passed on 17.05.2016 and 28.03.2017. During the course of arguments, the learned counsel representing the petitioner, upon realizing the law laid down in *Gurdial Singh v. Raj Kumar Aneja (2002) 2 SCC 445* has given up challenge to the order dated 17.05.2016. However, he still wishes to press the revision petition while challenging the order dated 28.03.2017.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The undisputed facts are that late Sh.Baljeet Singh along with his mother, brother and sister had executed an agreement to sell in favour of the respondent (plaintiff)-M/s Elite Realtech Private Limited on 13.04.2010 with respect to the land

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measuring 4 kanals on receipt of earnest money of ₹10,50,000/- out of the total sale consideration of ₹85,00,000/-. In the year 2011, the plaintiff (respondent herein) filed a suit for the grant of decree of permanent injunction restraining the defendant from alienating the property in any manner and for the grant of mandatory injunction directing the defendants to get the land in dispute partitioned amongst its co-sharers and thereafter, get a mutation of the partition recorded in the revenue record.

3. The defendants, while filing the written statement, admitted the execution of the agreement to sell but asserted that the plaintiff is not ready and willing to perform its part of the contract. It was also asserted that the sale deed was to be registered after making the balance payment to the petitioners within a period of six months from the date of the agreement to sell, but the plaintiff has not been taking the necessary steps to execute the sale deed. It was also pleaded that the defendants are ready and willing to execute the sale deed in favour of the plaintiff and they have sent a notice to the plaintiff on 24.12.2000 for performing their part of contract and the prices of the suit land have increased manifold, hence, the defendants are not bound to execute the sale deed.

4. During the pendency of the suit, the plaintiff filed an application for permission to amend the plaint so as to convert it into a suit for possession by way of specific performance of the agreement to sell with the consequential relief of permanent injunction, which was allowed on 31.03.2014. Thereafter, the amended plaint was filed. The defendants filed written statement to the amended plaint. While alleging that the defendants have unauthorizedly added certain paragraphs while filing the reply to the

amended plaint, an application was filed by the plaintiff for expunging the unauthorized pleadings. After the receipt of the reply, the application was allowed by the trial Court on 17.05.2016. Thereafter, the defendants (petitioners herein) filed an application for permission to make the following amendments in the written statement:-

“a) That the plaintiff amended the beginning of the plaint of para No. 3 as the plaintiff company and its associates group of companies are reputed developers and colonizers and are in process of setting up of a residential colony in an around village Budhen, Baroli, Kheri Kalan, Kheri Khurd and Bhatela etc of Tehsil & District Faridabad and has acquired more than 1800 Acre of Agriculture land in that process, the defendants approach the plaintiff company and offered to sell their land to the plaintiff company. That in this reply the plaintiff wants to amend the written statement and amend the para no. 3 of the written statement and the amendments may kindly be allowed to be incorporated in the beginning of para no. 3 of written statement as "it is wrong and denied that the plaintiff company has its associates and is a reputed developers and colonizers and in process of setting up of a residential colony Village Budhen etc of Tehsil & District Faridabad. it is further wrong and denied that the plaintiff and its associates of companies acquire more than 1800 Acre of agriculture land in process. It is further wrong and denied that the defendant approach the plaintiff company and offered to sell their land to

the plaintiff company. It is submitted here that the plaintiff company has no associates in Tehsil & District Faridabad.

*b) That the plaintiff inserted in new para in para No. 4 of the plaint. Hence the applicant/defendants wants to amend in the beginning of para No. 4 of the written statement and amendments may kindly be allowed to be incorporated in the opening of para no. 4 of the written statement as **"it is wrong and denied that the terms and conditions which was mentioned in para No. 4 was settled. It is further wrong and denied that the time and registration was tentative fixed for three months but subject to the partition of the suit land. It is further wrong and denied that the terms which was mentioned in para no. 4 of the plaint was settled at the time of settle the terms and condition of the sell. It is submitted here that the father of the defendant No. 1 is a senior citizen aged about 80 years old and is a illiterate person and the other defendants are also ill educated and un educated and the representative of M/s Elite Realtech Pvt. Ltd. namely Prem Singh put their signature and thumb impression of some blank papers by saying that the balance payment will be made within six months. That the terms and conditions mention in para no. 4 of the plaint are one sided terms hence the same is not binding upon the defendants and the same was gave undue wattage to the plaintiff.***

c) That the plaintiff has amend its plaint's in conclusion of

para No. 5 of the plaint. Hence the applicants/defendants wants to amend his its written statement on para no. 5 on merits in conclusion of para no. 5 of the written statement as "it is wrong and denied that the representative of company appeared before Sub Registrar Faridabad fixed for execution and registration of the sale deed and marked his presence before Sub Registration in form of affidavit. It is submitted here that the as the plaintiff firm has is no funds in his hands to pay the balance and sale consideration amount and the plaintiff is not ready to get the sale deed executed in his favour after making the balance payment. It is further submitted here that no intimation and massage either orally or written was sent to the defendant to came present before the Sub Registrar Faridabad for execution of sale deed.

d) That the plaintiff amend by way of omitted and new para wise inserted hence the applicants/defendants wants to omitted the para no. 6 of the written statement on merits and incorporate new para as "it is wrong and denied that at the time of execution of agreement to sell, Special Power of Attorney was also execute by the defendants and the same was irrevocable. It is further wrong and denied that the defendant authorized the plaintiff company to deal with matter in any manner or to represent before the director Town and Country Planning Haryana, Chandigarh or before other Authorities etc. It is submitted here that the defendants are ill educated and

uneducated persons and Prem Singh namely who representative the plaintiff company put their signature and thumb impression of the defendant on some blank papers and it may be the same was concerted into these valuable documents hence the defendants have reserve his every right to file criminal complaint Prem Singh and the directors of the plaintiff company.

*e) That as the plaintiff omitted para no. 9 of the plaint and in place of para no. 9 new para wise inserted hence the applicant/defendants wants to omitted wants to para no. 9 of the written statement and wants to inserted and incorporated as para no. 9 of the written statement as **"it is wrong and denied that the defendants were bent upon the wrangle out from the binding nature of agreement and it is further wrong and denied that the cause of action to file the present suit has not been matured it is further wrong and denied that the plaintiff company was compelled to file the suit for permanent and mandatory injunction. It is further wrong and denied that some of co-sharers in Khewat of defendants agreed to execute the sale deed qua their share in favour of the plaintiff or its sister companies. It is further wrong and denied that the plaintiff ask the defendants to execute the sale deed qua their share in favour of the plaintiff company. It is further wrong and denied that the plaintiff has no other efficacious remedy except to the file the present suit for possession by way of specific***

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performance of agreement. It is submitted here that the plaintiffs was never ready to perform his part of contract after making the balance payment as the plaintiff firm has no funds in its hand and wants to linger on the matter on one pretext or other. It is submitted here that now the prices of land has increased many fold and the plaintiffs company wants to get undue advantage upon the defendants.

*f) That the plaintiff omitted to para no. 9 of the plaint way by of amendment and inserted new para, hence the applicant/defendants wants to omitted para no. 11 of the written statement and wants to incorporate new para as **"it is wrong and denied that the plaintiff company has any cause of action to file the present suit and the same was accrued on tentative date.** it is further wrong and denied that further cause of action was accrued on 27-12-2010. It is further wrong and denied that the cause of action is a recurring one. It is further wrong and denied that cause of action was accrued on 27-05-2013 when other co-sharer in khewat agreed to execute sale deed qua their share in favour of the plaintiff company. It is further wrong and denied that the plaintiff ask the defendants to execute sale deed after receiving balance sale consideration amount. It is further wrong and denied that the defendant refused to execute the sale deed in favour of the plaintiff company. It is further wrong and denied that the final cause of action to file the suit accrued on 27-05- 2013. It is submitted*

here that the plaintiff company has no funds in his hand and does not want to get the sale deed registered after making the balance payment. It is submitted here that as the tentative date for execution of sale deed was fixed for within six months from the date of agreement and in this regard a notice was also sent to the plaintiff company, but the plaintiff never shows its ready and willingness to perform its part of contract and now due to passage of time the price of land has been increased many fold and it will give the undue advantage to the plaintiff.”

5. It shall be noted here that the defendants wanted to incorporate the bold portion in their written statement. After the receipt of reply to the application, the trial Court dismissed the application while giving the following reasons:-

- i) The application has been filed at a highly belated stage.
- ii) In the main case, arguments have been heard in part.
- iii) Even if the defendants are not willing to lead evidence to prove the assertions made in the proposed amended written statement, yet the plaintiff shall have to be given an opportunity to lead the evidence.
- iv) Filing of the amended written statement shall further complicate the proceedings which shall be totally unfair.

6. The correctness of the aforesaid order has been challenged in this revision petition by the defendant (petitioners herein).

7. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

8. On the one hand, the learned counsel representing the petitioners submits that the plaintiff was allowed to convert the suit into a suit for possession by way of specific performance of the agreement to sell. The plaintiff, while filing the amended plaint, has made certain assertions and the defendants, as a consequence of the amendment, wanted to amend the written statement in order to controvert those assertions. It is submitted that it is the plaintiff who has been granted indulgence, therefore, the defendants are required to be granted the same indulgence so as to give them proper opportunity to defend their case.

9. On the other hand, the learned counsel representing the plaintiff contends that the arguments in the main case have been heard and now at this stage, it would not be appropriate to allow the amendment.

10. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

11. From the perusal of the file, it is evident that in the beginning the plaintiff only filed a suit for permanent injunction and mandatory injunction. The application for amendment was filed and allowed on 31.03.2014. Thereafter, the amended plaint was filed. The defendants filed a detailed written statement without realizing that they were required to file an application for replying to the corresponding amendment in the written statement in order to project their defence in a proper form. In the amended plaint for grant of the relief of suit for specific performance of the agreement to sell, certain assertions have been made which are required to be contested by the defendants. In such circumstances, at the first stage, the plaintiff filed an application for expunging the aforesaid paragraphs which was allowed on

17.05.2016. In the meantime, the parties also led their evidence. However, the defendants, at the time of final arguments realized that there was a requirement to amend the written statement. A perusal of the proposed amendment proves that these amendments in the written statement are the necessary consequences of the amendment made in the plaint which has been allowed by the trial Court. The Court was required to keep this fact in mind while deciding the case.

12. The application under Order VI Rule 17 CPC can be filed even at the appellate stage. Undoubtedly, the arguments in the main case were partly heard, however, that itself would not be sufficient to deny an opportunity to the defendants to amend the pleadings. Hence, the first two reasons given by the trial Court for not allowing the application for amendment are erroneous.

13. Even if the plaintiff is required to given an opportunity to lead evidence, the Court is required to decide the case after giving sufficient opportunities to both the parties involved in the dispute to establish their case. The trial Court appears to have overlooked the fact that the proposed amendments are consequential to the amended plaint which was filed by the plaintiff. In these circumstances, the trial Court has further complicated the proceedings. It shall be unfair to the defendants if they are not granted an opportunity to amend the written statement and defend their case. Reliance in this regard can be placed on the *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another* 2022 AIR (Supreme Court) 4256.

14. Keeping in view the aforesaid facts and discussion, the present

revision petition is allowed. The order passed on 28.03.2017, is set aside. The defendants have already made a statement that they do not wish to lead any further evidence. If the plaintiff prays for an opportunity to lead evidence, the trial Court shall consider the same in accordance with the provisions of law.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 01, 2024
“DK”

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