

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-551-2024 (O&M)
Date of Decision:-19.04.2024

Mehar Singh ... Petitioner
Versus
Smt. Babita and Others ... Respondents

-.-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondents No.1 and 2.

RITU TAGORE, J. (Oral)

1. This revision is directed against the order dated 10.01.2024 (Annexure P-5) passed by learned Civil Judge (Junior Division), Karnal, whereby application under Order 6 Rule 17 read with Section 151 Code of Civil Procedure, filed by the petitioner (plaintiff before the learned trial Court) for amendment of plaint has been dismissed.
2. Learned counsel for the petitioner contends that petitioner instituted a suit for specific performance of agreement to sell dated 11.07.2006, against respondents (defendants before the learned trial Court) on several grounds, as detailed in the pleadings (Annexure P-1). The respondents No.2 and 3, being minors, were sued through their guardian / mother-respondent No.1. It is stated that respondents upon their appearance in the suit, filed their written statement (Annexure P-2), denying the

execution of agreement to sell and refuted the other averments of the petitioner.

3. Learned counsel submits that during the pendency of suit, petitioner moved an application for amendment of plaint (Annexure P-3) on two accounts. Firstly, to permit the petitioner to sue respondents No.2 and 3 in their individual capacity, as they have attained majority during the currency of the suit and have become legally entitled to be represented as such and be sued. Secondly, to allow him to incorporate the plea of assessment of un-liquidated damages in terms of Section 21 of Specific Relief Act, 1963 (in short referred to as the Act). In this regard, learned counsel argued that Section 21(5) of the Act mandates that no such compensation can be awarded unless pleaded by the plaintiff and proviso to the sub- clause further provides that such a prayer can be made at any stage of the proceedings, and court shall allow the plaintiff to amend his plaint on such terms as may be just for including a claim for such compensation.

4. Learned counsel for the petitioner submitted that learned Court materially erred in dismissing the application (Annexure P-3) without referring to the provisions of Section 21 of the Act. It is submitted that the refusal by the learned trial Court to allow the amendment, premised on the grounds that refund of double the amount of earnest money has already been prayed for in the plaint and that amendment will change the nature of the suit and would also lead to *de-novo* trial, was erroneous. The learned counsel contended that learned trial Court altogether erred in its approach, as both the reliefs under Section 21 and Section 22 of the Act are independent and distinct of each other, and relief could not have been declined to the plaintiff

as per the provisions of Section 21 of the Act, except on the terms as may deemed fit to the Court. The learned counsel for the petitioner further contended that proposed amendment will not change the nature of the suit, as prayer for grant of damages is a part of the relief, which plaintiff may further ask in the suit for specific performance of the agreement to sell and this will avoid multiplicity of litigation. The learned counsel for the petitioner thus prayed to set aside the impugned order and allow the application for amendment. To support his arguments relied upon **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Another, 2022 AIR (SC) 4256.**

5. On the other hand, learned counsel for respondents, submits that learned Trial Court has rightly dismissed the application because, by way of present application, the petitioner wanted to reopen the case, which is not permissible as the petitioner's evidence has already been closed and will result in delay of trial, which is at the stage of defendant's evidence. Learned counsel stated that defendants have vehemently denied the averments of the plaintiff taken in the plaint as well as execution of agreement to sell in question, and have specifically pleaded that the alleged agreement to sell is a forged and fabricated document by giving detailed reply to the application (Annexure P-4). The learned counsel stated that petitioner has evil eye on the property of the defendants, and previous suit of the petitioner regarding the suit property was dismissed on 20.09.2008. Learned counsel stated that all the facts which the petitioner intended to incorporate in plaint were well within his knowledge at the time of filing of the suit, but he purposely did not plead them in his plaint and is not entitled to amend his plaint at this belated stage, which is *mala-fide* in nature and would result in changing the

nature of the suit. The learned counsel for the respondents contended that the impugned order is reasonable and is legally sustainable in the eyes of law, and should not be interfered with. It is stated that there is no merit in the revision petition, and it be dismissed. To support his submissions counsel referred to **Jhang Biradari Housing Residents Society vs. Bharat Bhushan Sachdeva and Others, 2015(5) RCR (Civil) 849.**

6. I have heard learned counsel for the parties and have gone through the paper book with their valuable assistance.

7. It is suffice to say that suit for specific Performance (Annexure P-1) was instituted by the petitioner against the respondents, is pending for adjudication before the learned trial Court. There is no denial of the fact that at the time of presentation of the suit, respondents No.2 and 3 were minors and were represented through their Guardian mother, respondent No.1, and have now become major during the currency of the suit. The impleadment of minors on their attainment of majority in their individual capacity is necessary. The reasoning given by the learned trial Court, suggesting deemed ratification on their part, is flawed. Under the law, a minor on attaining majority gets the right to challenge the acts done by his guardian. On that account they need to be brought on record in their independent capacity to avoid multiplicity of litigation, later on.

8. The petitioner-plaintiff wanted to incorporate the plea of damages as per the provisions of section 21 of the Act. However, learned trial Court disallowed the prayer of the petitioner on the ground that aforesaid plea was already available with petitioner at the time of filing the suit. Therefore, he cannot be permitted to incorporate the same at the belated stage when suit

has reached at defendants' evidence and further the amendment will result in *de-novo* trial and delay the decision of the suit, which is pending since 2009.

9. At this stage, it is apposite to go through the provisions of Section 21 and 22 of the Specific Relief Act, which reads as under;-

21. Power to award compensation in certain cases.

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach [in addition to] such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.-The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.”

22. Power to grant relief for possession, partition, refund of earnest money, etc.-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause

(b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

10. The provisions of the Act contemplates that in addition to or in substitution of a claim for performance, a plaintiff is entitled to claim compensation. Under Section 21, sub-section (2) the court is empowered to award compensation for breach where it holds that there is a contract between the parties which was broken by the defendant but in the event, it

decides that specific performance ought not to be granted. Sub-section (3) of Section 21 of the Act empowers the Court to grant compensation for breach in addition to a decree for specific performance where Court is of the view that specific performance alone would not satisfy the justice of the case. Sub-Section (5) of the Act, however, stipulates that compensation cannot be awarded under the section unless the Plaintiff has claimed such compensation in the plaint. This provision is mandatory. The proviso to sub-Section (5) of Section 21 of the Act allows the plaintiff who has not claimed such compensation in the plaint to amend the plaint at any stage of the proceedings and the court shall at any stage of the proceedings allow an amendment for including a claim for such compensation on such terms as may be just.

11. Plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 of the Act stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just. Section 22 of the Act having a non-obstante provision therefore overrides provisions of CPC.

12. In **Kahini Developers Pvt. Ltd. vs. Mukesh Morarji Panchamatia and Others**, 2013(16) RCR (Civil) 708, it was held as under :-

“9. The object of the legislature in introducing the proviso to sub-section (5) of Section 21 and to sub-section (2) of Section 22 was to obviate a multiplicity of the proceedings. In **Babu Lal v. Hazari Lal**, (1982) 1 SCC 525: AIR 1982 SC 818 the Supreme Court noted that the legislature “has given ample power to the Court to allow amendment of the plaint at any stage.” (At para 20 page 825). This, the Supreme Court held, would include even the stage of execution. The Supreme Court also held that a mere contract for sale or for that matter, a decree for specific performance does not confer title on the buyer and that title would pass only upon execution of the decree. While discussing the issue of limitation, the Supreme Court held as follows:

“If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the Petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law Courts always abhor.”

13. Thus, the provisions of Section 21 of the Act provides that damages can be pleaded at any stage by the plaintiff. The relief under Sections 21 & 22 of the Act are distinguishable and independent Sections. Section 21 of the Act deals with damages and Section 22 of the Act deals with refund. The legal position, therefore in respect of scope and ambit of sections is very clear and has been made so by the above precedent.

14. In view of the above position of law, this Court is of the view, plaintiff cannot be deprived of his right to incorporate the pleas, which are available to him under the law. The learned trial Court overlooked the provisions of law and thus erred in disallowing the application of the petitioner for amendment of the plaint by which he wanted to add the plea of damages and array the respondents No.2 and 3 in their individual capacity. Further, law of amendment provides that Court should allow the parties to bring their plea on record, so that matter in controversy can be finally, completely and effectively be decided. No doubt, for causing the delay, in raising the pleas at belated stage of the suit, the petitioner-plaintiff needs to be burdened with costs.

15. In view of the discussion made above, the order dated 10.01.2024 (Annexure P-5) of the learned trial Court is set aside and the petitioner-plaintiff is allowed to amend his plaint as prayed for, subject to payment of costs ₹30,000/- to the respondents. Learned trial Court shall grant one effective opportunity to the plaintiff to file amended plaint and shall be given only one effective opportunity to lead evidence on the amended pleas. In above terms, revision petition is allowed.

16. The opinion expressed herein above is purely restricted to the issue in hand and same be not construed any expression on the merits of the case.
17. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

19.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No