

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1867 of 2019

Date of Decision: 15.02.2024

Vinay Kumar Sood

... Petitioner(s)

Versus

Amarjit Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner(s).

Mr. Jaswinder Rana, Advocate
for Mr. Sandeep Arora, Advocate
for the respondents.

Anil Kshetarpal, J.

1. In this revision petition, the interlocutory order passed by the First Appellate Court for permitting the plaintiffs to amend the plaint in order to seek an alternative relief of refund of earnest money in the suit already filed for specific performance of the agreement to sell is assailed by defendant No.2.
2. The plaintiffs’ suit for the grant of confirmation of possession by way of specific performance of the agreement to sell was dismissed by the Trial Court, which was challenged in appeal. During the pendency of the appeal, the plaintiffs filed an application for claiming an alternative relief in terms of Section 22 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”) which was allowed by the First Appellate Court.

The learned counsel representing the petitioner submits that the

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application was filed after a considerable delay and the plaintiffs would be deemed to have omitted to seek the aforesaid relief. He submits that at this stage, it was not appropriate for the First Appellate Court to permit the plaintiffs to amend the plaint as the same was filed beyond the prescribed period of limitation.

4. This Court has considered the submissions of the learned counsel representing the parties. Section 22 of the 1963 Act is extracted as under:-

“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, 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:

Provident 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.”

5. It is evident that Section 22 of the 1963 Act starts with a non obstante clause. It has been placed at a higher pedestal than the Code of Civil Procedure, 1908. While filing a suit for specific performance of the agreement to sell, the plaintiff is to be permitted to seek relief of possession, partition, refund of earnest money and other connected reliefs. This provision was incorporated in the 1963 Act in order to overcome the difficulties faced by the parties before the enforcement of the 1963 Act. The purpose of including the provision in the new Act was to avoid multiplicity of the litigation. Even otherwise, the Court has a power to mould relief even in the absence of specific prayer.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

February 15, 2024
“DK”

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