



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(311)

1. CR-5855-2022 (O&M)
M/s K.L.V. Builders and Developers and anotherPetitioners

Versus

Vinay Sethi and othersRespondents

2. CR-2917-2024 (O&M)
Ajaib Singh and othersPetitioners

Versus

Vinay Sethi and othersRespondents

3. CR-1510-2024 (O&M)
M/s K.L.V. Builders and Developers and anotherPetitioners

Versus

Vinay Sethi and othersRespondents

Date of Decision: - 14.08.2024

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present: - Mr. Anand Chhibbar, Senior Advocate, with
Mr. G.S. Jagpal, Advocate, and
Mr. Lalit Thakur, Advocate
for the petitioners in CR-1510-2024, and
for the petitioners/defendants No. 18 and 19
in CR-5855-2022.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Santosh Sharma, Advocate,
for the petitioners in CR-2917-2024.

Mr. Chetan Mittal, Senior Advocate, with
Mr. Mayank Aggarwal, Advocate,
Mr. Sajal Koser, Advocate, and

Mr. Amit Parashar, Advocate,
for respondents No.1 and 2 in CR-2917-2024, and
for respondents No.1 and 2 in CR-5855-2022, and
for respondents No.1 and 2 in CR-1510-2024.

Mr. Saurav Bhatia, Advocate, and
Mr. J.S. Chahal, Advocate,
for respondents No.3 and 10 in CR-2917-2024.

Mr. Sumit Jain, Advocate,
for respondents No.8 and 9 in CR-2917-2024;
for respondents No.20 and 21 in CR-5855-2022, and
for respondents No.20 and 21 in CR-1510-2024.

VIKAS BAHL, J. (ORAL)

1. Present order will dispose of three revision petitions. The first Civil Revision No.5585 of 2022 has been filed by defendants No.18 and 19 challenging the order dated 10.10.2022 (Annexure P-8) passed by the trial Court in Civil Suit No.370 of 2021 instituted on 07.05.2021 titled as Vinay Sethi Vs. Naib Singh, whereby the application filed by defendants No.18 and 19 under Order 7 Rule 11 CPC has been disposed of. The Civil Revision No.1510 of 2024 has also been filed by defendants No.18 and 19 and in the revision petition, the challenge is to the order dated 29.11.2023 passed by the trial Court in Civil Suit No.370 of 2021, vide which the application under Order 6 Rule 17 CPC filed by respondents No.1 and 2/plaintiffs for amendment of the suit has been allowed. The third Civil Revision No.2917 of 2024 has been filed by defendants No.3 to 8, 10, 12 to 16 and in the same, the challenge is to the order dated 29.11.2023, which is the same order which is subject matter of challenge in Civil Revision No.1510 of 2024. In all three petitions, the challenge is to the orders emanating from the same civil suit. The reference to documents has been made from Civil Revision No.5585 of 2022, unless it has been specifically specified.

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FACTS OF THE CASE

2. Respondents No.1 and 2 (hereinafter referred to as “the plaintiffs”), had filed a suit for mandatory injunction directing defendants No.1 to 16 to execute the sale documents with respect to four acres of land along with other requisite documents in favour of the plaintiffs and to take further steps in compliance of the agreement/token money/sai dated 22.08.2020 for the sale of immovable property measuring 15 acre 5 kanals situated in Khewat No.160/179, 159/178, 158/177, Khasra No.18/24(8-0), 25/2(3-11), 26//10/2(3-13), 11/1(3-13), 27//3/2(4-0), 4(8-0), 5(8-0), 6(8-0), 7(8-0), 8(8-0), 13(9-11), 14(8-0), 15(8-0), 16(8-0), 17(6-11), 25/1(3-16), 26//9(8-0), 10/1(3-8), 26//1(7-4), situated at village Naugiari, Tehsil Mohali, District SAS Nagar and marked as A, B, C, D, E, F, G & H in the site plan (Annexure P-7). A further prayer was made for permanent injunction restraining the defendants No.1 to 16 from alienating the property in question to anyone except the plaintiffs, in any manner whatsoever and further restraining defendants No.18 and 19 from executing any kind of sale document or any other document regarding the suit land. Further a prayer for permanent injunction restraining defendants No.20 and 21 from granting any CLU or approval of any kind to the defendants No.1 to 19 or to any other person or company except the plaintiffs as well as restraining defendants No.1 to 16 along with defendants No.18 and 19 from doing any act direct or

indirect by way of creating any charge etc., was also made.

3. It was the case of the plaintiffs that they were engaged in the business of development and sale of Housing and other related infrastructure projects and that defendants No.1 to 16 were the co-owners/co-sharers of the immovable property measuring 15 acre 5 kanals, which land was stated to be un-partitioned and un-demarcated. It was averred in the plaint that defendant No.17 was the Mediator and had subscribed the agreement dated 22.08.2020 and that defendants No.18 and 19 were doing the business under the name and style of KLV Builders and the plaintiffs had reason to believe that the defendants No.18 and 19 were in the process of entering into a clandestine sale document with the defendant Nos.1 to 16 to defeat the rights of the plaintiffs. It was further averred by the plaintiffs that defendants No.1 and 2 had claimed that they along with the other defendants No.3 to 16 were the owners of the suit land and defendants No.1 and 2 had assured the plaintiffs that they had full legal authority and consent of the defendants No.3 to 16 to negotiate the rates and other terms and conditions for sale of the land in question.

4. It was averred by the plaintiffs that they had formed a Joint Business Venture under the name and style of “Ashvin Earth Developers” and opened a well furnished office at a Commercial Space at SCO 56, Sector 82, JLPL, Mohali after making a huge investment and that on the declaration given by defendants No.1 and 2 that they had got the consent from defendants No.3 to 16 to finalize the terms and conditions of the agreement to sell, they entered into an agreement dated 20.08.2020 and the said agreement was signed by defendants No.1 and 2 for themselves and also on behalf of other co-owners/co-sharers i.e. defendants No.3 to 16 and by the

plaintiffs and the same was witnessed by Kuldeep Singh (witness No.1) and other witness was Gurmeet Singh who is stated to be a relative of one of the seller party to the agreement and the said persons had been arrayed as proforma defendants No.22 and 23 in the suit. It was further averred that defendant No.17 had subscribed the agreement in his own handwriting and also appended his signatures. Highlighting terms of the said agreement, it was averred that the sale consideration for the said land was fixed at Rs.1,85,00,000/- per acre and that the agreement of sale was to be executed on 30.11.2020. The sale deed was to be executed on 22.08.2022. It was specifically averred that a sum of Rs.50,00,000/- had been paid as earnest money and out of the same, an amount of Rs.1,68,000/- was paid in cash and the remaining amount of Rs.48,32,000/- was paid through account payee post dated cheques in the name of co-owners/co-sharers. The details of the said cheques have been given in para No.6 of the plaint and the same is reproduced as under: -

*“i) 3 Cheques No. 026416, 026418 and 026417 all dated 30.08.2020 for Rs. 5,00,000/- each in favour of Sh. Naib Singh (**Defendant no. 1**), Sh. Bhupinder Singh (**Defendant no. 4**) and Sh. Sukhdev Singh (**Defendant no. 5**) respectively.*

*ii) 3 Cheques No. 026419, 026415 and 026426 all dated 30.08.2020 for Rs. 7,00,000/- each in favour of Sh. Lakhvir Singh (**Defendant no. 2**), Sh. Gurmel Singh (**Defendant no. 6**) and Sh. Bahadur Singh (**Defendant no. 16**) respectively.*

*(iii) 3 Cheques No. 026424, 026425 and 006340 all dated 30.08.2020 for Rs. 2,33,000/- each in favour of Sh. Gurmukh Singh (**Defendant no. 13**), Sh. Ranjodh Singh (**Defendant no. 14**) and Sh. Jagjit Singh (**Defendant no. 15**) respectively.*

(iv) 3 Cheques No. 026420, 026421 and 026422 all

dated 30.08.2020 for Rs. 77,666/- each in favour of Smt. Ravinder Kaur (Defendant no. 10), Sh. Sukhdeep Singh (Defendant no. 11) and Sh. Navdeep Singh (Defendant no. 12) respectively.

v) 3 cheques no. 480487, 480485 and 480486 all dated 30.08.2020 for Rs. 1,00,000/-, Rs. 1,00,002 and Rs. 1,00,000/- in favour of Sh. Gurdeep Singh (Defendant no. 9), Swarn Singh (Defendant no. 8) and Sh. Kulwant Singh (Defendant no. 7) respectively.”

5. The further case of the plaintiffs was that the cheques were in possession of defendants No.1 to 16 and that defendants No.1 and 2 had acted as authorized persons/signatory of defendants No.3 to 16 for executing the subsequent documents and that in the agreement dated 22.08.2020, it was specifically noted that in case of refusal or non-compliance with the terms of the agreement dated 22.08.2020, it was stated that it would be open to the plaintiffs to get the registry done through specific performance from a Court of law and/or a sum of Rs.7,40,00,000/- was payable to the plaintiffs as damages/compensation in the event of default and that the said compensation could be claimed through Court. It was further averred that defendant Nos.1 and 2 claiming themselves to be authorized persons, acting with consent of the co-sharers i.e. defendants No.3 to 16, agreed in writing that they were bound to execute registered sale deed of four acres of land in favour of plaintiffs by December, 2020 and undertook to provide consent letter as required by GMADA for the approval of the project for the remaining land and that after registration of the said four acres of land, till the Registry of the remaining land, the possession of the whole land will be handed over to the plaintiffs for initiating development etc. for which Rs.30,000/- as contract charges of remaining land (11 acres 5 kanal), would be paid to defendants

No.1 to 16. It was thus pleaded that the contract was a complete and concluded one. It was further averred that when the defendants were lingering on the matter, a registered legal notice dated 27.11.2020 was issued to the defendants and a response thereto was given by the defendants No.1 to 16 on 24.12.2020. It was highlighted that the said response was jointly given by defendants No.1 to 16. It was further the case of the plaintiffs that defendants No.1 to 16 through defendant No.17 had approached the plaintiffs for enhancement of rate by Rs.5 lakh per acre as they had new offer at the enhanced rate and that the plaintiffs ultimately learnt from reliable sources that defendants No.1 to 16 wanted to cheat the plaintiffs and without cancelling the agreement and refunding the cash and cheques received by them, defendants No.1 to 16 had clandestinely sold some part of the land to defendants No.18 and 19. It was further averred that the present suit had been filed seeking the leave of the Court under Order II Rule (3) of the Code of Civil Procedure, 1908, to sue for specific performance and/or recovery and other reliefs at a later stage after the completion of investigation by the police in the complaint filed by the plaintiffs against the defendants No.1 to 16. On the basis of the said pleadings, the present suit was filed.

6. On 21.09.2021, a joint written statement had been filed on behalf of defendants No.1 to 16, which also prima facie shows that the defendants No.1 to 16 are together. In the said written statement, the primary plea taken by the defendants in para No.5 was that they had not entered into any agreement dated 22.08.2020 and that the said agreement was forged and fabricated. Replication was filed to the said written statement filed by the defendants No.1 to 16 on 12.11.2021, in which, it was specifically stated that the agreement dated 22.08.2020 is neither false nor fabricated. Defendants

No.18 and 19 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint. In the said application, three grounds were raised. The first ground being that the suit had been filed without there being any cause of action. The second ground being that there was no cause of action accrued to the plaintiffs against defendants No.18 and 19. The third ground was to the effect that the plaintiffs had tried to evade the affixing of appropriate stamp duty/ad valorem Court fee as they were praying for issuance of directions to take steps in compliance of the agreement and thus, the consequential relief of the plaintiffs was execution of sale deed, for which the plaintiffs were liable to pay Court fee. The third objection was taken in paras No.4 and 5 of the application and the said paras are reproduced hereinbelow:-

*“4. That plaintiffs have filed suit for mandatory injunction directing defendants No.1 to 16 to execute the sale documents i.e. agreement to sell, sale deed of four acres on the basis of agreement/ token money/sai dated 22.8.2020 for sale of immovable property. **By this plaintiffs have tried to evade the fixing of appropriate stamp duty/ad valorem Court fee, as the plaintiffs are praying for issuance of directions to take steps in compliance of above mentioned agreement. Consequential relief of the plaintiffs is execution of sale deed for which plaintiffs are liable to pay court fee as per value of the property. Plaintiffs cannot be allowed to avoid ad valorem, by simply using different words and language.***

*5. That as the present suit is not correctly valued and the requisite amount of stamp paper/**ad valorem: court fee have not been affixed on the plaint.** As such present plaint is liable to be dismissed.”*

7. Reply to the said application was filed by the plaintiffs and it

was specifically stated that the plaint disclosed cause of action against all the defendants including defendants No.18 and 19 and that the specific plea regarding the same had been made in paras No.13, 14 and 16 of the plaint in addition to other paras. It was further specifically stated in para 3 that defendants No.18 and 19 after having put in appearance, had purchased some portion of the property which fact was evident from the jamabandi annexed with the replication. It was also pleaded that the requisite court fee had been affixed on the plaint, however, in case the Court came to the conclusion at that stage or at any stage of the trial of the suit regarding deficient Court fee, then, the plaintiffs were ready to comply with any order from the Court regarding affixation of additional Court fee. Para 3 of the reply dated 06.12.2021, is reproduced as under: -

*“3. That para no. 3 of the Application is wrong and denied. As already stated above, Defendants no. 18 and 19 are necessary parties more particularly **when during the pendency of the present suit, Defendants no.18 and 19, after putting in appearance, have purchased some portion of the property as evident from the jamabandi annexed with the replication filed by Plaintiffs.** It is therefore incorrect to say that Defendants no. 18 and 19 are not necessary parties or that there is no cause m.) e of action against them.”*

It would be relevant to note that in the said application under Order 7 Rule 11 CPC, the defendants No.18 and 19 had not taken any plea with respect to their being a concluded contract which point is now sought to be agitated before this Court.

8. Learned trial Court, vide order dated 10.10.2022, decided the application under Order VII Rule 11 CPC after taking into consideration the law on the point. With respect to the objections raised by defendants No.18 and

19 that there was no cause of action to file the suit, more so, qua defendants No.18 and 19, it was observed that entire plaint had to be read as a whole and only the averments in plaint which are to be taken into consideration and not the written statement or any other documents in defence for deciding the application under Order 7 Rule 11 CPC. It was further observed that on a reading of the said plaint, it cannot be even remotely stated that the plaint does not disclose any cause of action and that it was one thing to say that the plaint does not disclose any cause of action and it was another thing to say that although the plaint discloses a cause of action but the same is not maintainable in the present form and in the said situation, the Court has to go into the entire set of documents including those furnished by the plaintiffs and the defendants and the same cannot be made a ground for rejection of the plaint under Order VII Rule 11 CPC as is sought to be made in the present case. Reliance in the said order has been placed upon judgment of the Hon'ble Supreme Court in the case of "**Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors.**" ***reported as (2021) 9 SCC 99*** and also in "***The Central Provident Fund Commissioner, New Delhi V. Lal J.R. Education Society, reported as (2016) 14 SCC 679.*** It was further observed that it was a settled principle of law that the Court cannot reject a plaint qua only some defendants and continue the suit against the others and that there cannot be any piecemeal rejection of the plaint and in the said regard, reliance was placed upon the judgment of the Supreme Court in the case of "***Sejal Glass Ltd. V. Navilan Merchants Pvt. Ltd.***", ***reported as (2018) 11 SCC 780*** and in the case of "***Madhav Prasad Aggarwal and another Vs. Axis Bank Ltd. and another***", ***reported as (2019) 7 SCC 158.*** On the basis of the said observations, objections No.1 and 2 raised by defendants No.18 and 19 were rejected and it was observed that the averments

in the plaint are required to be adjudicated by holding a trial. With respect to objection No.3 raised by defendants No.18 and 19 regarding affixation of Court fee, the trial Court directed the plaintiffs to pay ad valorem Court fee on or before the next date of hearing i.e. 09.11.2022 and while doing so, had observed that the plaintiffs had sought relief for mandatory injunction/permanent injunction qua the suit property, but a perusal of the plaint would show that the same was in effect a suit seeking specific performance of the agreement dated 22.08.2020 and thus, the plaintiffs were required to affix ad valorem Court fee. It was also observed that the said suit was essentially a suit for possession by way of specific performance.

9. It is not in dispute that on 09.11.2022, the plaintiffs had affixed the ad valorem Court fee as directed vide order dated 10.10.2022. It is the said order dated 10.10.2022, which is subject matter of challenge in Civil Revision No.5585 of 2022, which has been filed by defendants No.18 and 19. In the said Civil Revision No.5585 of 2022, the application filed on behalf of defendants No.1 to 16 under Order 7 Rule 11 has also been annexed as Annexure P-12. Even a perusal of the said application would show that no specific plea for rejection of the plaint on the ground that there was no concluded contract was taken. In Civil Revision No.5585 of 2022, notice of motion was issued on 12.12.2022 and no interim stay was granted.

10. After the deposit of the ad valorem Court fee, the petitioners moved an application dated 18.08.2023 (Annexure P-12 with CR-1510-2024) for amendment under Order 6 Rule 17 CPC. In the application, it was stated that they wanted to amend the suit and convert it into a suit for possession by way of specific performance of agreement dated 22.08.2020 and that the same was within limitation and for the said purpose the headnote of the suit and

prayer clause were required to be amended and one para i.e. 14 was to be replaced/substituted. The reply to the said application was filed by defendants No.18 and 19 and a copy of the same has been annexed as Annexure P-13 along with Civil Revision No.1510 of 2024 and in para No.2 of reply on merits, it was reiterated that the agreement dated 22.08.2020 was a forged and a fictitious document. Learned trial Court vide order dated 29.11.2023 (Annexure P-13 in Civil Revision No.1510 of 2024) allowed the said application and while allowing the said application observed that the power to allow an amendment under Order 6 Rule 17 CPC is wide and can be exercised at any stage of the proceedings, in the interest of justice and that technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties and further the amendment sought should be allowed in order to avoid any multiplicity of litigation. Reliance was placed upon a judgment of the Hon'ble Supreme Court in "***B.K. Narayanan Pillai Vs. Parmeshwar Pillai, reported as 2000(1) SCC 712***", in which, it was held that while deciding an application under Order 6 Rule 17 CPC Court should not adopt a hyper technical approach. It was observed by the trial Court that in case the amendment sought is refused, it would lead to injustice and multiplicity of litigation. Reference was also made to the order dated 10.10.2022, vide which the application under Order 7 Rule 11 CPC was disposed of and also to the fact that the plaintiffs had deposited an amount of Rs 65,08,480 as ad valorem court fee.

11. It has been highlighted by learned counsel for the plaintiffs/respondent Nos.1 and 2 that on 21.02.2024, last opportunity was granted to the defendants to file amended written statement and thereafter on 01.03.2024, the case was adjourned for filing written statement on the payment

of Rs.2500/- as costs. Thereafter, CR-1510-2024 was filed by defendant Nos.18 and 19 against the order dated 29.11.2023 along with the said amendment and the matter was taken up on 11.03.2024 on which date the matter was adjourned to 12.03.2024 and it was mentioned by the Coordinate Bench of this Court that mere pendency of the present petition would not be taken as a ground to delay the proceedings before the trial Court. On 12.03.2024, again the case was adjourned to 02.04.2024 and on 02.04.2024, on the request made by learned Senior counsel for the petitioners, the matter was adjourned. In the said case, neither notice of motion has been issued nor any interim stay has been granted. Respondent Nos.1 and 2 who are the plaintiffs had filed caveat and are ready to finally argue the matter.

12. It is not in dispute, that before the trial Court on 12.03.2024 the amended written statement was filed by defendant Nos.18 and 19, on 27.03.2024, amended written statement was filed by defendant Nos.2, 3, 4 and 7, on 28.03.2024, amended written statement was filed by defendant Nos.5, 6, 8, 10 and 16 and on 28.03.2024 itself, defence of defendant Nos.9, 11, 12, 13, 14, 15 was struck off. Zimni order dated 28.03.2024 is reproduced hereinbelow:-

“Present: Sh. Sajal Koser Advocate counsel for plaintiffs.

*Sh. Snehpreet Singh Advocate counsel for defendants
no.1 to 16.*

Sh. G S Jagpal Adv counsel for defendants no. 18 and 19.

Sh. Maninder Badwal Adv for defendants no. 20 & 21.

Sh. P S Bassi Adv for defendants no. 17 & 22.

Defendant no. 23 exparte VOD 18.11.2021.

*Cost of Rs. 1500/- not paid by defendants no. 1 to 16. Same
be paid on 12.04.2024.*

***Amended written statement and amended reply on the
application under Order 39 Rules 1 and 2 CPC filed on behalf of***

defendants no. 5, 6, 8, 10 and 16.

Now, the matter stands adjourned to date fixed for filing replication by the plaintiff.

Today, learned counsel for the defendants no. 1 to 16 has filed an application for impleading the LR's of defendant no. 1 Naib Singh.

Thereafter, plaintiff No. 1 Vinay Sethi and plaintiff no. 2 Ashwani Nagpal have suffered a statement that they have no objection if the application for impleading the LR's of defendant no. 1 Naib Singh is allowed.

In view of the no objection statement suffered by the plaintiffs, the application for impleading the LR's of defendant no. 1 Naib Singh stands allowed.

Now, the matter stands adjourned to 12.04.2024 for filing amended head note by the plaintiff.

*Today, the case was fixed for filing written statement on behalf of defendants number 9, 11, 12, 13, 14 and 15 but again written statement has not been filed. Case called several times. It is already 4:30 PM. **As such defence of defendants no. 9, 11, 12, 13, 14 and 15 are hereby struck off. As they have already taken sufficient time i.e. more than 3 months but till date they have failed to file the amended written statement.***

Date of Order: 28.03.2024

Sd/- (Harpreet Kaur)

Civil Judge (Senior Division) SAS Nagar/

UID NO . PB00272”

13. It is also not in dispute that on 22.04.2024, amended written statement was filed by LR's of defendant No.1. CR-2328-2024 was filed by defendant Nos.12 to 16 challenging the order dated 28.03.2024 vide which defence of the petitioners-defendants was struck off. The Coordinate Bench of this Court vide order dated 22.04.2024 allowed the said petition and granted one effective opportunity to the petitioners therein to file their written statement subject to costs of Rs.10,000/- to be paid to the respondents therein. Relevant

portion of the said order which has been annexed as Annexure R-1/1 along with CM-12349-CII-2024 in CR-2917-2024 is reproduced hereinbelow:-

“Navdeep Singh & another

... Petitioners

Vs.

Vinay Sethi & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. G.S. Bains, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioners/defendant No.12 to 16 against the order dated 28.03.2024 (Annexure P-13) passed by the Civil Judge, Sr. Division, SAS Nagar Mohali, vide which the defence of the petitioners/defendants was struck off.

Xxx xxx

5. I have heard learned counsel for the petitioners at length and have perused the pleadings on record.

6. From the perusal of the impugned order, it transpires that despite availing sufficient opportunities, the defendants/petitioners failed to file their amended written statement. It has been held in a catena of judgments that Proviso to Rule 1 (8) CPC is directory and not mandatory in nature and in the justified circumstances, the time limit provided under statute for filing of the written statement in civil proceedings can be extended by the Court. Moreover, hyper technical approach is not to be adopted by the Court as procedural laws are meant for imparting substantial justice and not to obstruct the judicial proceedings. So, in the instant case also, though there is no infirmity in the impugned order, yet it will be appropriate, if in the interest of justice, one effective opportunity is granted to the petitioners to file their written statement to defend their case. The other party can be well compensated with costs. Therefore, the trial Court is directed to grant one effective opportunity to the petitioners to file their amended written statement subject to

payment of costs of Rs.10,000/- to be paid to the respondents. Accordingly, the impugned order dated 28.03.2024 (Annexure P-13) is set aside and the revision petition is allowed in the aforesaid terms.

7. Pending application(s), if any, shall also stand disposed of.”

A perusal of the said order would show that although Coordinate Bench of this Court found that there is no infirmity in the impugned order but in the interest of justice, granted one opportunity to file reply. However, in spite of seeking one opportunity to file amended written statement, which was granted by this Court, defendant Nos.3 to 8, 10, 12 to 16 filed CR-2917-2024 challenging the order dated 29.11.2023 after a delay of more than five months. In the said case, on 13.05.2024, notice of motion was issued by the Co-ordinate Bench of this Court and in the meantime, the trial Court was directed to adjourn the case beyond the date fixed. Thereafter, on 22.05.2024, defendant Nos.12 to 16 have also filed their amended written statement. On 19.07.2024, the plaintiffs/respondents have moved an application bearing No.CM-12349-CII-2024 in CR-2917-2024 seeking vacation of the order dated 13.05.2024 while alleging that there was concealment of material facts.

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

14. Learned Senior Counsel for the petitioners in CR-1510-2024 has stated that the application filed under Order 7 Rule 11 CPC by defendant Nos.18 and 19 deserves to be allowed in toto and the suit filed by the plaintiffs deserves to be rejected. Learned Senior Counsel for the petitioners appearing in CR-2917-2024 has also supported the said submission. It has been jointly submitted that in the present case, a perusal of agreement to sell/token money/Sai dated 22.08.2020 (Annexure P-4) would show that even as per the said agreement, agreement to sell had not been entered into and it was simply

an agreement to enter into an agreement to sell and thus, there was no concluded contract. It is further submitted that the said agreement even as per the case of the plaintiffs has been signed only by defendant Nos.1 and 2 and has not been signed by defendant Nos.3 to 16 and thus, it cannot in any way have any effect on the rights of defendant Nos.3 to 16 much less on the rights of the defendant Nos.18 and 19. It is argued that the last page of the said agreement (page 66 of the paper book) does not carry any date nor does it carry signatures of the plaintiffs and thus, on the said additional ground, said part of the document in any case cannot be read. In support of his arguments, learned Senior Counsel for the petitioners has relied upon *judgment dated 19.03.2019 passed by the Coordinate Bench of this Court in CR-5043-2014 titled as "Ragbir Singh Sandhu Vs. Sanjay Garg and others"* and also judgment of the Hon'ble Supreme Court in case *"Speech & Software Technologies (India) Pvt. Ltd Vs. Neos Interactive Ltd." reported as 2009(1) SCC 475*. It is submitted that since it is not a concluded contract thus, no specific performance can be ordered in favour of the plaintiffs and thus, suit filed by the plaintiffs initially for mandatory injunction and even subsequently for specific performance is not maintainable. It is further submitted that at any rate, defendant Nos.18 and 19 have not signed the agreement dated 22.08.2020 and there is no cause of action against defendant Nos.18 and 19 and thus, the plaint qua them in any case deserves to be rejected. It is further submitted that while passing the impugned order dated 10.10.2022, the trial Court had observed that the suit is in effect a suit for specific performance whereas suit was only for mandatory injunction and the said observations were not within the realm of deciding the application under Order 7 Rule 11 CPC. It is submitted that in the order dated 10.10.2022, the trial Court had observed that the present suit is in

the form of specific performance of agreement to sell dated 22.08.2020 which is perverse and contrary to the documents.

15. It has been jointly argued that the application under Order 6 Rule 17 CPC, filed by the plaintiff for amendment has been allowed solely on account of the observations made in the earlier order dated 10.10.2022 vide which application under Order 7 Rule 11 CPC was disposed of and the same is illegal. It is further submitted that a perusal of the plaint would show that the plaintiffs had submitted that they have a right to seek specific performance but instead of seeking specific performance, they had filed a suit for mandatory and permanent injunction by only pleading that they were seeking leave of the Court under Order II Rule 3 CPC to amend the suit subsequently for specific performance. It is submitted that thus, the order allowing the application under Order 6 Rule 17 CPC also deserves to be set aside being illegal and against law. It is also submitted that the amendment has primarily been allowed only on account of the fact that huge Court fee has been deposited by the plaintiff and the said reason can't be a valid reason for allowing the application for amendment filed under Order 6 Rule 17 CPC.

ARGUMENTS ON BEHALF OF RESPONDENT NOS.1 AND 2:-

16. Learned senior counsel for respondents no.1 and 2 has submitted that the application filed under Order 7 Rule 11 CPC more so with respect to rejection of plaint on ground no.1 and 2 is absolutely misconceived and deserves to be rejected and the impugned order deserves to be upheld. It is submitted that the primary plea taken before this Court is with respect to the agreement not being a concluded contract. It has been highlighted that in the application under Order 7 Rule 11 CPC filed by the petitioners, no such plea has been raised nor the said plea was agitated before the trial Court and thus,

the petitioner cannot for the first time raise the said plea before this Court. It is further submitted that a perusal of the agreement dated 22.08.2020 would show that the same was a concluded contract inasmuch as the sale consideration being Rs.1,85,00,000/- per acre had been specifically mentioned, the land in question being 15 acres 5 kanals had also been specifically mentioned and the details of the said land had also been given, the earnest money of Rs.50 lacs which included an amount of Rs.1,68,000/- in cash and the balance amount of Rs.48,32,000/- by virtue of 15 cheques was also specifically mentioned and that the said cheques were in the name of defendants no.1 to 16 was also specifically stated in the said agreement. It is submitted that even the last date of the execution of the sale deed was fixed as 22.08.2022 and it was also provided that in case the agreement was not complied with, then the plaintiff had the right to execute the sale deed through Court or seek return of Rs.7,40,00,000/- as compensation and even the Commission to be given to the Commission Agent i.e. defendant no.17 was also specifically provided for to be 1%. It is further submitted that further details as to how the agreement was to be executed was given in the last page of the said agreement and thus, from a reading of the said agreement, it is apparent that all the relevant terms and conditions have been duly crystalized and mentioned and thus, the same was a concluded contract. In support of his arguments, learned senior counsel for respondents no.1 and 2 has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Kollipara Srimulu vs. T. Aswatha Narayana* reported as **1968(3) SCR 387** and the judgment of Bombay High Court in the case of *Shri Sharad Sitaramji Shende and others vs. Shri Nilesh Subhashandji Katariya and others* reported as **2022(5) ALL MR 277**, the SLP against which has been dismissed vide order dated 14.11.2022 and also the

judgment of the Delhi High Court in the case of ***Sobhag Narain Mathur vs. Pragya Agarwal & Ors.*** reported as ***2010(6) RCR (Civil) 525***. It is further submitted that even the argument raised on behalf of defendants no.18 and 19 that the plaint be rejected qua them is misconceived inasmuch as, as per the law laid down by the Hon'ble Supreme court of India in ***Sejal Glass Ltd. (supra)*** and in ***Madhav Prasad Aggarwal and another (supra)***, part rejection of the plaint is impermissible in law. It is further submitted that specific pleadings have been made in the plaint more so in paragraphs 13, 14 and 16 which clearly shows that there is cause of action against the defendants no.18 and 19. It is argued that it is proved beyond doubt from the record, which fact has not been disputed on behalf of the petitioners, that certain land out of suit land has been purchased by defendants no.18 and 19 during the pendency of the suit and thus, they are lis pendens purchasers. It is submitted that lis pendens purchaser does not have any independent right of maintaining an application under Order 7 Rule 11 CPC as he has to sink and swim with the defendants no.1 to 16. It is argued that it is the averments in the plaint only which have to be taken into consideration for deciding the application under Order 7 Rule 11 CPC and not the pleas raised in the written statement. In support of his arguments, learned senior counsel for the respondents no.1 and 2 has relied upon the judgment of the Hon'ble Supreme Court in ***H.S.Deekshit & Anr. vs. M/s Metropoli Overseas Limited & Ors.*** reported as ***2022(4) R.C. R. (Civil) 275*** and the judgment of this High Court in the case of ***Ram Parkash vs. Jagdeep Singh Ghangas*** reported as ***2021(2) PLR 347***. It is argued that in similar circumstances, a Coordinate Bench of this Court in the case of ***Shashi Dhawan vs. S.M.Khan*** reported as ***2011(2) CivCC 662*** had decided the case in favour of the plaintiff. Learned senior counsel for respondents no.1 and 2 has further

pointed out that in the present case as is apparent from the facts which have been detailed hereinabove, amended written statement has been filed by the petitioners, who are defendants before this Court and the matter would be tried finally by the trial Court after the evidence is led by both the parties. It is submitted that respondents no.1 and 2 have also deposited the ad valorem court fee of an amount of Rs.65,08,418/- in pursuance of the order dated 10.10.2020 and that the observations made in the order on the aspect of court fee are in fact in favour of the petitioners and the petitioners are not challenging the said part of the order and have not prayed that the plaintiffs are not liable to pay ad valorem court fee and thus, the arguments raised on the basis of the said observations are completely misconceived. It is submitted that the order dated 10.10.2020 is absolutely legal and in accordance with law and the same deserves to be upheld.

17. That even with respect to the application for amendment under Order 6 Rule 17 CPC, it has been stated that the said application has been correctly allowed. The suit is at an initial stage and even the issues have not been framed and the amendment seeking addition of prayer for specific performance has been made within limitation. It is further submitted that amendment is necessary for the proper and final adjudication of the case and in order to avoid multiplicity of litigation. It is pointed out that it has been repeatedly held by the Hon'ble Supreme Court as well as by this Court that in a suit like the present suit, the pith and substance of the suit is for seeking specific performance and once the pith and substance of the suit is for specific performance, then the amendment does not change the nature of the suit. In support of his arguments, learned senior counsel for respondents no.1 and 2 has relied upon the judgment of the Coordinate Bench of this Court in *Shashi*

Dhawan (supra), *Saroj vs. Joginder Singh and another* reported as *2020(4) RCR (Civil) 118*, the SLP against which has been dismissed, *Ansal Buildwell Ltd. vs. Mrs. Shalini Chhabra and Others* reported as *2012(2) PLR 637*, the SLP against which has been dismissed, *Joginder Pal vs. Yudhvir Singh*, *CR no.7064 of 2024 decided on 21.04.2015*, *Meenakshi and Anr. vs. Gagan Jot Singh and another* reported as *2024(2) RCR (Civil) 595*, *Smt. Sarvo and others vs. Sunil Dewan and others* reported as *(2000) 3 RCR (Civil) 486* and *Bhasin Tobaccos Ltd. & Ors. vs. Gambro Nexim (India) Medical Ltd. & Ors. IA 3263/2017 in CS (COMM) 962/2016 decided on 28.11.2017*. It is submitted that at any rate, at the stage of deciding an application under Order 6 Rule 17 CPC, the merits of the amendment are not to be seen and the primary consideration is as to whether the amendment is necessary. In support of his arguments, learned senior counsel for respondents no.1 and 2 has relied upon the judgment in the case of *Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.* reported as *2006(2) RCR (Civil) 577*.

18. It is further submitted that the act and conduct of the petitioners in CR-2917-2024 disentitles them from challenging the order dated 29.11.2023 after the period of more than 5 months and after having earlier filed CR-2328-2024 vide which they had prayed that they be granted one opportunity to file an amended written statement which was granted by this Court subject to payment of cost of Rs.10,000/-. It is further submitted that defendants no.18 and 19 although were made party in the original suit but during the pendency of suit they had executed the registered sale deeds from defendants No.1 to 16 and were thus *lis pendens* purchaser and do not have any right to challenge the order passed under Order 6 Rule 17 CPC. It is submitted that the order allowing the application is legal and in accordance with law and deserves to be upheld.

FINDING OF THE COURT

19. This Court has heard learned senior counsel for the petitioners as well as learned senior counsel for respondents No.1 and 2 and also perused the record of all the three revision petitions and is of the opinion that all the revision petitions are meritless and deserves to be dismissed.

20. This Court would first adjudicate Civil Revision No.5855 of 2022, in which the challenge is to the order dated 10.10.2022, vide which the application under Order 7 Rule 11 CPC, filed by defendants No.18 and 19 has been disposed of.

21. At the outset, it would be relevant to refer to two judgments of the Co-ordinate Bench of this Court, as the issues involved in the said cases were similar to the issues involved in the present case. The first judgment is in the case of *Shashi Dhawan (supra)*. In the said case also, an application was filed by the defendants under Order 7 Rule 11 CPC, which was dismissed and the revision petition was filed challenging the said order. The suit filed by the plaintiff therein was also for permanent injunction restraining the defendant therein from alienating/disposing off the suit property to any other person except the plaintiff and for mandatory injunction directing defendant no.1 to complete the sale in favour of the plaintiff therein. In the said case, all the arguments which have been raised on behalf of the petitioner herein were also raised before the Co-ordinate Bench including the argument that the suit for injunction simplicitor was not maintainable in the facts and circumstances of the case. Even the plea with respect to there being no concluded contract was also raised. In the above-said case, it was also highlighted on behalf of the defendants therein that in the absence of the other co-owner, relief for specific performance could not be granted. After considering all the said arguments, the

Co-ordinate Bench dismissed the petition and upheld the orders dismissing the application under Order 7 Rule 11 CPC by observing that in a case like this, the relief for specific performance could be granted in the shape of mandatory injunction and the real intention of the relief sought was to be seen and in fact the plaintiff therein was infact filing a suit for specific performance of the contract in the garb of mandatory injunction and that in such situation, the Court could very well ask the plaintiff therein to pay the Court fee, which was required to be paid for seeking specific performance and merely because the specific performance was sought in the garb of a suit for mandatory injunction, the same would not make the plaint liable to be rejected. It was further observed that since the plaintiff therein had sought injunction restraining the defendant therein from creating third party interest and had further sought mandatory injunction commanding the defendant therein to execute the sale deed in favour of the plaintiff, thus, the plaintiff therein had successfully pleaded cause of action in the plaint. The relevant portion of the said judgment is reproduced as under: -

“3. xxx xxx xxx ***It has been averred in the application that suit simplicitor for prohibitory injunction is barred by Section 41(h) of the Specific Relief Act, since plaintiff has failed to file suit for specific performance of the contract.*** Learned Trial Court vide the impugned order, rejected the application moved by defendant no.1, hence, defence no.1 has approached this Court by invoking jurisdiction of this Court under Article 227 of the Constitution of India.

4. Mr. A.S. Chandhiok, Senior Advocate, assisted by Ms. Vibha Dhawan, Advocate argued that since plaintiff himself has admitted in ***the reply to the application under Order 7 Rule 11 C.P.C. that he has not filed suit for specific performance***, hence in view of Section 41(h) of the Specific Relief Act, ***suit for permanent prohibitory injunction was not maintainable.*** It has further been

argued that in view of the dictum of the Apex Court in the matter of Speech and Software Technologies (India) Private Limited vs. Neos Interactive Limited reported in (2009) 1 Supreme Court Cases 475, agreement to execute agreement is not enforceable, hence, in any case, suit for mandatory injunction is not maintainable. It has further been argued that if agreement to execute agreement cannot be enforced hence, in any case, suit is not maintainable. It is further contended that the absence of another co-owner - Sh. Om Parkash Sharma, relief for specific performance cannot be granted, hence, plaint is liable to be rejected.

6. *Having perused the entire plaint, I find that plaintiff has filed a suit for permanent prohibitory injunction restraining the defendant not to create third party interest and mandatory injunction commanding the defendant to execute the sale deed in favour of the plaintiff. Plaintiff has successfully pleaded cause of action in the plaint.*

7. *Now question comes as to whether relief for specific performance can be granted in the shape of mandatory injunction. In the opinion of this Court, real intention of the relief sought is to be seen. If courts find that in fact plaintiff is seeking specific performance of the contract in the garb of mandatory injunction, Court can very well ask the plaintiff to pay the Court fee on the plea of specific performance, however, merely because specific performance is sought in the light of the mandatory injunction does not make the plaint liable to be rejected. Plaint can be rejected only when on the calling of the Court, plaintiff failed to pay court fee on the relief for specific performance of the contract.*

8. *Now, the next question comes as to whether suit is maintainable against defendant no.1 without impleading Om Parkash Sharma. Admittedly, plaintiff is not claiming that he has entered into agreement with Om Parkash Sharma. If the plaintiff is able to establish the legal and enforceable agreement and cash receipt between the plaintiff and defendant no.1, decree for specific performance can be granted in accordance with law in*

favour of the plaintiff qua the share of defendant no.1. Merely because another co-owner is not impleaded would amount to not claiming the relief qua the share of the said co-owner.”

22. In the above-said case, only an amount of Rs.2,00,000/- was paid out of the total sale consideration and the agreement to sell, which was to be executed, was also not executed. The facts of the present case are on a higher footing than the facts of the above-said case, inasmuch as, in the present case, apart from having paid the Court fee, the necessary amendment in the prayer clause seeking specific performance has already been sought and granted. The amount which is stated to be earnest money in the present case is to the tune of Rs.50,00,000/-, which is a substantial amount. The last date for the execution of the sale deed has also been mentioned in the agreement dated 22.08.2020 and that on the failure of the defendants to perform their part of the agreement, the amount of compensation has also been specifically mentioned and the same is to the tune of Rs.7.40 crores and it has further been specifically stated that the plaintiffs have a right to get the sale deed executed through the Court.

23. Similarly, in the case of ***Ansal Buildwell Ltd.'s (supra)*** the co-ordinate Bench of this Court in a case where a suit for declaration and mandatory injunction was filed by the plaintiff therein and an application under Order 7 Rule 11 CPC was filed by defendant No.1 therein raising the plea that the suit for declaration and mandatory injunction is barred was decided in favour of the plaintiff and the order rejecting the application under Order 7 Rule 11 CPC on the issue of non-maintainability was upheld and it was observed by the Co-ordinate Bench that in essence, since the relief was being claimed for specific performance, thus, it could not be said that the suit was not maintainable in the present form or that the suit to claim the relief of specific performance of the agreement was barred by limitation. The relevant portion of

the said judgment is reproduced as under: -

“3. Defendant No.1 moved application under [Order 7 Rule 11 of the Code of Civil Procedure](#) (for short, ‘the CPC’) for rejection of the plaint on the ground that suit for declaration and injunction is not maintainable and the plaintiffs have to file suit for possession of the suit plot by specific performance of the agreement.

4. Defendants No.5 and 6 also moved application under [Order 7 Rule 11 CPC](#) alleging that plaintiffs had to pay ad-valorem court fee in view of the relief claimed by them but plaintiffs have paid court fee of Rs.25/- only and, therefore, the suit of the plaintiffs is liable to be dismissed. It was also alleged that the suit is barred by [Sections 34, 37, 38](#) and [41\(h\)](#) of the Specific Relief Act, 1963 (for short, ‘the Act’).

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6. Learned trial Court, i.e. learned Additional Civil Judge (Senior Division), Gurgaon vide impugned order dated 8.2.2011 (Annexure P.1) held that plaintiffs have filed the instant suit for possession **although cleverly couched the same in form of declaration and mandatory injunction. The trial Court disposed of applications of defendant No.1 and defendants No.5 and 6 by directing the plaintiffs to pay ad-valorem court fee on value of the suit property. It is undisputed that plaintiffs have accordingly paid ad- valorem court fee in the trial Court. Feeling aggrieved by impugned order of the trial Court, instant revisions have been preferred.**

7. I have heard the learned counsel for the parties and perused the case file.

8. Learned senior counsel for the petitioners contended that suit for declaration and mandatory injunction only is barred by [Section 41\(h\)](#) of the Act.

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12. xxx xxx xxx The plaint read as a whole including the reliefs claimed by the plaintiffs would clearly depict that the plaintiffs sought relief of possession of the suit property as

*well as specific performance of the agreement, **besides some other reliefs, although cleverly couched in the form of declaration and mandatory injunction, which was done to avoid payment of ad-valorem court-fee. However, in essence, the reliefs claimed include the relief of possession as well as of specific performance. Consequently, it cannot be said that the suit is not maintainable in the present form or that suit to claim relief of specific performance of the agreement is now barred by limitation.** In this view of the matter, judgment cited by counsel for the petitioners are not applicable to the instant case. On the contrary, judgments cited by counsel for respondents No.1 and 2 in the cases of [Sant Lal Jain](#) (supra), [India Navigation Company](#) (supra) and [Islam Ahmad](#) (supra) are fully attracted to the facts of the instant case. Judgment in the case of [Surjit Kaur](#) (supra), cited by counsel for respondents No.1 and 2, is however, not applicable to the instant case. In that case, the suit was for mandatory injunction by licensor against licensee after termination of license.”*

24. The SLP bearing No.35775/2012 filed against the said judgment was also dismissed by the Hon’ble Supreme Court vide order dated 12.03.2012.

25. The main argument raised on behalf of the petitioners to the effect that the plaint deserves to be rejected under Order 7 Rule 11 CPC on the ground that there is no concluded contract, is misconceived and deserves to be rejected for the reasons detailed hereinafter. The application dated 18.11.2021 under Order 7 Rule 11 CPC filed by the petitioners (defendants No.18 and 19) has been annexed as Annexure P-6. A perusal of the said application shows that no plea has been raised in the same that the plaint deserves to be rejected on the ground that the agreement/contract is not a concluded contract. A perusal of the impugned order dated 10.10.2022 would show that no plea/argument has been raised before the trial Court to the effect that the plaint should be rejected on the ground of there being no concluded contract. The petitioners cannot thus be

permitted to agitate the said point for the first time before this Court without raising any grounds in the application and without agitating the same before the trial Court. Even a perusal of the application dated 22.11.2022 (Annexure P-10) filed under Order 7 Rule 11 CPC by defendants No.1 to 16 would show that no specific plea with respect to the plaint being required to be rejected on the ground of there being allegedly no concluded contract has been raised.

26. In addition to the above, it would be relevant to note that the Hon'ble Supreme Court in the case of "**Kollipara Sriramulu Vs. T. Aswathanarayana and others**", reported as **1968(3) SCR 387**, has observed that it was well established that a mere reference to a future formal contract will not prevent a binding bargain between the parties and merely because the parties had referred to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. It was observed that the question as to whether there was a concluded contract or not would depend upon the intention of the parties and the special circumstances of each particular case and merely because the formal agreement is to be drawn up subsequently would not establish as a proposition that the previous agreement is not binding. It was further observed that the mere omission to settle the mode of payment does not affect the completeness of the contract as the vital terms of the contract like the price and the area of the land in question and the time for completion of the sale were all fixed. The relevant portion of the said judgment is reproduced as under: -

"3. We proceed to consider the next question raised in these appeals, namely whether the oral agreement was ineffective because the parties contemplated the execution of a formal document or because the mode of payment of the purchase money was not actually agreed upon. It was submitted on behalf of the appellant that there was no contract because the sale was

conditional upon a regular agreement being executed and no such agreement was executed We do not accept this argument as correct. It is well-established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed. The question depends upon the intention of the parties and the special circumstances of each particular case.

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As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed. We accordingly hold that Mr. Gokhale is unable to make good his argument on this aspect of the case.”

27. In the above-said case, there was no written agreement and the said judgment was passed after trial and after the entire evidence had been led. Thus, the issue as to whether there is a concluded contract or not in the present case, would depend upon the terms of the agreement, intention of the parties and also on the special circumstances of the case, which can only be brought up after the trial takes place and the evidence is led by both the parties.

28. In the present case, the agreement/document dated 22.08.2020 would show that the land which has been agreed to be sold to the plaintiffs has been specified as 15 acres and 5 kanals and the details of the said land have also been given, including the area where it is situated. The consideration

amount per acre has also been fixed as Rs.1,85,00,000/- per acre. The date of execution of sale deed has been fixed as 22.08.2022. A substantial amount of earnest money i.e. Rs.50,00,000/-, Rs.1,68,000/- being in cash and the remaining amount of Rs.48,32,000/- in the form of 15 cheques issued in favour of defendants No.1 to 16 have also been specifically mentioned. Importantly, it has been mentioned that in case the defendants back out from the agreement, then, it would be open to the plaintiffs/purchasers to get the sale deed executed through Court or the plaintiff would even have a right to claim the compensation of an amount of Rs.7.40 crores through Court. The commission to the extent of 1% to be paid to the Commission agent has also been fixed. Thus, as per the law laid down in the judgment of the Hon'ble Supreme Court in the case of ***Kollipara Sriramulu (supra)***, the vital terms of the contract are *prima facie* mentioned in the said agreement. Further on the last page of the agreement, it has also been mentioned that initially the seller party would be bound to execute registry regarding 4 acres of land in favour of the purchaser by December, 2020 and with respect to other land they would be bound to give consent letters and record of 30 years of jamabandi to the purchasers and also would be bound to give necessary documents for getting the project passed from GMADA. It was further stipulated that after the registry of 4 acres of land, lease amount of Rs.30,000/- will be paid to the seller regarding the other remaining land and the purchasers/ plaintiffs would be entitled to develop the land.

29. In the said circumstances, the Court cannot out-rightly, while considering the application under Order 7 Rule 11 CPC, accept the plea raised on behalf of the petitioners, to the effect that in the present case, there is no concluded contract. The terms of the agreement along with averments made in

the plaint as well as the evidence to be produced before the trial Court have all to be considered before coming to a concrete conclusion as to whether the present contract is a concluded contract or not.

30. As is apparent from the record as well as the arguments raised before this Court, it is apparent that several issues would rise for consideration in the present case during the course of trial. Apart from the issue as to whether the present agreement is a concluded contract or not, it is also required to be seen on the basis of the pleadings and evidence on record as to whether the defendants No.1 to 16 are all bound by the agreement dated 22.08.2020 or only defendants No.1 and 2 are bound by the same as it is case of the plaintiffs that defendants No.1 and 2 had signed the agreement dated 22.08.2020 after having been authorized by other defendants i.e. defendants No.3 to 16. Regarding the said aspect, specific pleadings have been made in the plaint to the effect that defendants No.1 and 2 had specifically stated that they were authorized on behalf of all the co-owners/co-sharers and to *prima facie* highlight the said aspect, the learned senior counsel for respondents No.1 and 2 has referred to the fact that 15 cheques of a substantial amount of Rs.48,38,000/-, which were issued, at the time of the agreement dated 22.08.2020 were in the name of all the defendants No.1 to 16 and also to the fact that even the written statement dated 21.09.2021 (Annexure P-2) has been filed by defendants No.1 to 16 jointly. It has been submitted that even one application under Order 7 Rule 11 CPC dated 22.11.2022 (Annexure P-10) has been filed by defendants No.1 to 16 jointly through a single counsel and that the details of all the defendants No.1 to 16 and their respective shares in the property as well as their Aadhar Cards have been annexed along with the replication and have been made a part of the record and the said documents have been supplied to the plaintiffs by

defendants No.1 and 2. It was also highlighted that even a perusal of para 6 of the plaint would show that the cheques have been issued of the amount which correspondent to the respective share of the co-owners/co-shares i.e defendants No.1 to 16, which information was provided by defendants No.1 and 2. Further, reference has been made to para No.10 of the plaint to show that even in response to the notice dated 27.11.2020 issued by the plaintiffs, a joint reply on behalf of defendants No.1 to 16 had been received by the plaintiffs and a copy of the said reply had been annexed as Annexure P-6, with the plaint. Thus, the question as to whether the agreement dated 22.08.2020 is binding on defendants No.1 to 16 or defendants No.1 and 2 is required to be considered during the course of trial.

31. In case it is ultimately held after full trial that defendants no.3 to 16 are not bound by the agreement dated 22.08.2020, then the next question that would arise would be the relief to which the plaintiffs would be entitled to, in case the agreement dated 22.08.2020 is proved. The trial Court on the basis of the evidence on record could possibly grant specific performance of the share of defendants no.1 and 2 or could even grant the lesser relief of damages for Rs.7.40 crores as specifically mentioned in the agreement dated 22.08.2020. In the said circumstances, it cannot possibly be said that the plaint deserves to be rejected at the threshold. Defendants no.18 and 19 / petitioners were made party in the present suit as there were specific pleadings made in the plaint that defendants no.1 to 16 in order to defeat the rights of the plaintiffs, were wanting to sell their land to defendants no.18 and 19 at a higher rate. Specific relief was also sought against defendants no.18 and 19 inasmuch as they were sought to be restrained from executing any sale document. It has not been disputed before this Court that after the institution of suit on 07.05.2021, sale

deeds have been executed by defendants no.1 to 16 in favour of defendants no.18 and 19 and the first sale deed is dated 05.08.2021 and that defendants no.18 and 19 appeared in the suit on 12.07.2021. Thus, with respect to the said aspect, defendants no.18 and 19 are lis pendens purchasers. The arguments of learned senior counsel for respondents no.1 and 2 to the effect that defendants no.18 and 19 would have to sink and swim with the defendants no.1 to 16, thus, cannot be outrightly rejected and the said aspect along with other aspects would be finally considered by the trial Court. Moreover, in case the trial Court comes to the conclusion that specific performance with respect to entire share of defendants no.1 to 16 or with respect to the share of defendants no.1 and 2 is to be ordered, then the same would also affect the rights of defendants no.18 and 19 as it is not disputed that they have purchased the suit land during the pendency of the suit. Moreover, perusal of the reply dated 06.12.2021 filed by the plaintiff to the application under Order 7 Rule 11 CPC would also show that it has been specifically pleaded by the plaintiff in paragraph 3, which has been reproduced hereinabove, that defendants no.18 and 19 have purchased some portion of the land after putting in their appearance in the civil suit and even the jamabandi regarding the same had been annexed with the reply.

32. That Bombay High Court in the case of ***Shri Sharad Sitaramiji Shende and others (supra)*** had held that while dealing with the revision petition arising out of dismissal of the application under Order 7 Rule 11 CPC and while upholding the said order, had observed that the language of the documents had to be construed in the light of the surrounding circumstances, in order to come to a conclusion as to whether an agreement / contract is concluded contract or not and that an agreement which was “Sauda Chitthi”

could not at the stage of Order 7 Rule 11 CPC be held to be merely an expression of desire to enter into a contract and that the Court could not hold at the stage of Order 7 Rule 11 CPC that there was no concluded contract. The relevant portion of the said judgment is reproduced hereinbelow:-

“6. In the said suit, the applicants filed the said applications at Exhs.39 and 57, under Order VII Rule 11 of the CPC, for rejection of the plaint. While the applicants in C.R.A. No. 16/2022, claimed that there was no concluded contract and no specific performance could be granted of an agreement to enter into an agreement, the applicants in C.R.A. No.17/2022, additionally sought rejection of the plaint because they were not even signatories to the said documents, of which specific performance was claimed. In other words, the applicants claimed that there was no cause of action disclosed in the plaint, thereby justifying its rejection. It was further claimed by the applicants before the Court below that the suit was hopelessly barred by limitation and on that ground also the plaint deserved to be rejected.

*7. By the impugned common order, the Court below **rejected** both the applications, holding that the documents in question read with the contents of the plaint sufficiently disclosed cause of action and that in the facts and circumstances of the present case, limitation being a mixed question of facts of law, the plaint could not be rejected on either ground raised by the applicants.*

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*9. Mr. M.G. Bhangde, learned Senior Counsel appearing for the applicants in both the applications submitted that the impugned common order deserved to be set aside **and the plaint ought to be rejected as the documents in question clearly demonstrated that the parties had executed an agreement to enter into an agreement and, therefore, no decree of specific performance could be granted on the face of it. It was submitted that the contents of the plaint read with the aforesaid two documents demonstrated that no concluded contract was executed and that***

it was merely a desire of the parties to enter into an agreement, which was yet to be executed and, therefore, there was no question of specific performance of such a document being granted by the Court below.

10. The learned Senior Counsel invited attention of this Court to the contents of the aforesaid two documents to submit that there was no question of any ambiguity in the matter and that the documents did not signify a concluded contract for the reason that a specific agreement stating the terms of the contract between the parties was yet to be executed. The mode and method of payment, as also time fixed for performing the contract were not specified, thereby showing that the respondent No.1 could not claim existence of cause of action for filing the suit for specific performance.

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23. In order to conclude that a document can be construed as a concluded or completed contract, certain factors need to be appreciated. As far back as in 1878, the House of Lords in the aforementioned case of W.J. Rossiter, George Cutis and others Vs. Daniel Miller (supra), held that the parties could be said to be in negotiation when they may have broadly agreed on cardinal points, but some essential particulars to the agreement still remain to be settled. But, merely because the parties have expressly stipulated therein that there shall be a formal agreement prepared in the future, that in itself cannot lead to the conclusion that the parties are merely in negotiation.

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31. This Court is of the opinion that applying the above-mentioned principles pertaining to the question, as to whether the documents signify a concluded contract or not, at this stage, the respondent No.1 has clearly made out a prima facie case for the matter to go to trial, with an opportunity to the parties to lead evidence in respect of their respective stands. As noted above, the position of law as clarified by the Supreme Court specifies that the language of the document has to be construed in the light of

surrounding circumstances. The reference to the manner in which the revision applicants were constrained to file the suit and the fact of pendency of the appeal arising therefrom, shows the circumstances in which the extension of time was necessitated in the context of the “Sauda Chitthi”, and it could not be said at this stage that the parties had merely expressed their desire to enter into a contract or that at this stage itself it can be said emphatically that there was no concluded contract between the parties. This applies equally to the objection raised by original defendant nos. 5 and 9, as regards absence of their signatures on the documents, for the reason that certain facts are pleaded in the plaint about why absence of their signatures would not absolve them of their liability and that decree of specific performance ought to be passed against them also. This aspect would also require an opportunity for the parties to lead evidence.

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*33. The emphasis on the absence of details of the mode of payment of consideration and time being fixed for conclusion of the contract is answered by the judgment of the **Supreme Court in the case of Kollipara Sriramulu (Dead) by his legal representative Vs. T. Aswatha Narayana (supra)**, which in turn relies upon the judgment of House of Lords in the case of W.J. Rossiter, George Vs. Daniel Miller (supra). This Court is of the opinion that the material on record, including the pleadings in the plaint and the documents in question cannot lead to a conclusion that the plaint deserves **to be rejected at the threshold and that the trial is not at all warranted in the facts and circumstances of the present case.**”*

33. In the above said case, all the pleas raised by the petitioner herein have been raised on behalf of the petitioners therein, including the argument to the effect that there was no concluded contract and thus, the specific performance could not be granted of an agreement to enter into an agreement

and also the fact that the petitioner, who is seeking rejection of the plaint is not even a signatory to the document in question and that the suit was hopelessly barred by time. After considering all the said arguments, the order dismissing the application under Order 7 Rule 11 CPC was upheld. The case of the plaintiffs in the present case is on higher footing than the facts of the above said case. The SLP against the said order i.e., Special Leave to Appeal no.18365-2022 has been dismissed by the Hon'ble Supreme Court vide order dated 14.11.2022. In another case i.e., ***Sobhag Narain Mathur (supra)***, the Delhi High Court had rejected the application under Order 7 Rule 11 CPC in which the suit for specific performance of agreement to sell was filed on the basis of a “biana” (token money).

34. A perusal of the averments made in the plaint along with the documents attached with the plaint in the present case would clearly show that the plaintiffs have cause of action to file the present suit against all the defendants and at this stage, the arguments of learned senior counsel for the petitioner to the effect that the plaint be rejected on the ground that there is no concluded contract cannot be accepted in view of the aforesaid facts and circumstances.

35. That even the plea raised on behalf of the petitioners to the effect that the plaint qua defendants no.18 and 19 be rejected is also completely misconceived. In this regard, it is submitted that as has been stated hereinbefore specific averments have been made in the plaint with respect to the cause arising against defendants no.18 and 19 and it has also come on record, which fact has not been disputed on behalf of the petitioners that the said defendants no.18 and 19 have executed sale deeds from defendants No.1 to 16 after having put in appearance in the present suit and thus, on the said aspect, are lis

pendens purchaser. Moreover, the Hon'ble Supreme Court of India in the case of *Sejal Glass Ltd. (supra)* had held that a plaint as a whole is required to be rejected under Order 7 Rule 11 CPC and in case plaint survives against certain defendants and / or properties, then Order 7 Rule 11 CPC will have no application at all and that suit as a whole must then proceed to trial. The relevant portion of the said judgment is reproduced hereinnbelow:-

“2. An application dated 8-7-2016 was filed by the Defendant(s) under Order VII Rule 11 stating that the plaint disclosed no cause of action. By the impugned judgment dated 7-9-2016, it has been held that the plaint is to be bifurcated - it discloses no cause of action against the Directors i.e. Defendant Nos. 2 to 4 but the suit is to continue against the Defendant No.1-Company. It has further been held that the defendant, in any case, is barred from filing a written statement in the suit as he has taken inordinate time to do so.

3. In our view, the impugned judgment is wrong on principle.”

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8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.

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10. In contrast to the above provisions, which apply on a demurrer, the provisions of Order XIV Rule 2, read as follows:

*“2. Court to pronounce judgment on all issues.-(1)
Notwithstanding that a case may be disposed of on a*

preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

The Court is vested with a discretion under this order to deal with an issue of law, which it may try as a preliminary issue if it relates to the jurisdiction of the Court, or is a bar to the suit created for the time being in force. Obviously, this provision would apply after issues are struck i.e. after a written statement is filed. This provision again cannot come to the rescue of learned counsel for the respondent.

11. This being the case, we set aside the impugned judgment and grant the defendants in the suit a period of eight weeks from today within which to file their written statement after which the suit will proceed to be tried.”

36. In the above said case also, an application under Order 7 Rule 11 CPC was filed which was allowed by virtue of the impugned judgment dated 07.09.2016. The SLP against the same was allowed by the Hon'ble Supreme Court and the order was set aside.

37. That following the judgment in the case of ***Sejal Glass Ltd. (supra)***, the Hon'ble Supreme Court in ***Madhav Prasad Aggarwal and another (supra)***, had held as under:-

“10. We do not deem it necessary to elaborate on all other

arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant I company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties. Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

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14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by Respondent 1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief "cannot be entertained" in exercise of power under Order 7 Rule 11(d) CPC. That power is limited to

rejection of the plaint as a whole or not at all.”

38. In the above said case, it was reiterated that a plaint cannot be rejected against certain defendants and properties under Order 7 Rule 11 CPC. Thus, the said argument on behalf of defendants no.18 and 19 deserves to be rejected on the said point alone.

39. In the present case, it has also not been disputed that all the petitioners have already filed their amended written statement. The court fee to the tune of Rs.65,08,418/- has already been deposited by the plaintiffs on 09.11.2022. Thus, seeing from all angles, a trial is necessary to be held in the present case.

40. That the judgment of the Coordinate Bench of this Court in the case ***Raghubir Singh Sandhu (supra)*** relied upon on behalf of the petitioners does not further the case of the petitioners in any manner. In the said case, it was specifically noticed by the Coordinate Bench of this Court that with respect to the clause pertaining to the right of the purchaser, in the eventuality of the seller backing out of the sale, with respect to getting the property transferred in his name through Court of law or to claim damages was specifically struck off by putting a cross on the said clause. Whereas in the present case, a perusal of the document dated 22.08.2020 (Annexure P-4) would show that it specifically provides that in case the defendants back out from the agreement, then the purchaser / plaintiff would have right to get the sale deed executed through the court or could ask for return of Rs.7.40 crores as compensation. Additionally in the case of ***Raghubir Singh Sandhu (supra)***, no prayer/application was made on behalf of the plaintiffs to seek amendment nor any such amendment was allowed and even no court fee as required for seeking specific performance was affixed and out of the total sale consideration of Rs.1.95 crores, only token

money of Rs.2 lacs had been paid in the said case. The facts and the circumstances of the said case are completely different from the present case. Moreover, the Coordinate Bench in the abovesaid case while allowing the revision petition filed by the defendants had directed the defendants to refund the amount of Rs.2 lacs along with interest at the rate of 7.5%. The relevant portion of the said judgment is reproduced hereinbelow:-

*“7. xxx xxx xxx xxx Besides, the clause pertaining to the right of the purchaser in the eventuality of the seller party backing out for the sale of the aforesaid property due to any reason **giving the purchaser the right either to accept the damages settled between the parties or to get the aforesaid property transferred in his name through the Court of law was specifically struck out by putting a cross (X) on both sides of the clause.**”*

41. That even the judgment of the Hon'ble Supreme Court in the case of **Speech & Software Technologies (India) Pvt. Ltd. (supra)** relied upon by the learned Senior counsel for the petitioners would also not further the case of the petitioners. The said case was not a case arising from an application filed under Order 7 Rule 11 CPC but was a case in which an application under Section 11(6) of the Arbitration and Conciliation Act 1996 had been filed by the applicant for appointment of the former Chief Justice of the High Court of Kerala as a sole arbitrator. The primary issue raised in the said case was as to whether the services agreement which contained the arbitration clause ceased to exist on the termination of the tripartite share purchase agreement on which the Hon'ble Supreme Court had observed that the termination of the tripartite share purchase agreement has nothing to do with the existence of the services agreement which was separately executed between the parties. A secondary issue was also raised in the said case to the effect as to whether the tripartite

share purchase agreement was novated, rescinded or revoked on account of the Letter of Intent dated 01.08.2006 and it is while making reference to the Letter of intent, it was observed that the same was only an agreement to enter into agreement inasmuch as even the letter of intent provided that both the parties have agreed to have set a deadline to sign an agreement by 15.08.2006. In the said background it was observed that the Letter of Intent did not novate, rescind or supersede the tripartite share purchase agreement and that since service agreement dated 15.07.2006 had not ceased to exist thus, the former Chief Justice of the High Court of Kerala was appointed as the sole arbitrator. The facts of the said case are completely different from the facts of the present case. In the present case as has been detailed hereinabove, the agreement dated 22.08.2020 contains terms and conditions which are the vital terms and conditions. The factum of the plaintiff having right to seek execution of sale deed through Court and also claim a quantified amount as damages has also been mentioned in the agreement dated 22.08.2020 and thus, the judgment of the Hon'ble Supreme Court being based on completely different facts would not further the case of the petitioners herein. Keeping in view the abovesaid facts & circumstances, the order dated 10.10.2022 being legal and in accordance with law, deserves to be upheld and CR-5855-2022 being merittles, deserves to be dismissed and is accordingly dismissed.

42. It is however, made clear that the observations made in the present order while deciding the present revision petition arising out of an application under Order 7 Rule 11 CPC are only for the purpose of considering the legality or otherwise of the order dated 10.10.2022 and the same should not be construed as an expression on the merits of the main case and all aspects would be considered independently by the trial Court on the basis of the pleading and

the evidence produced before the trial Court.

CR No.1510-2024 and CR-2917-2024

43. This Court would now consider the legality of the order dated 29.11.2023 vide which the application filed by the plaintiffs under Order 6 Rule 17 CPC has been allowed. Challenge has been made to the said order in both the said revision petitions. A perusal of the impugned order dated 29.11.2023 (Annexure P-14 along with CR-1510-2024) would show that the Court had taken into consideration the fact that the amendment sought was necessary in order to avoid multiplicity of litigation and also to avoid injustice to the plaintiffs. It was further observed that the power of the Court to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and that the Court should not adopt a hyper technical approach at the time of deciding the said application for amendment. From the facts of the present case, it is apparent that the amendment was sought only to convert the suit for mandatory injunction and permanent injunction to that of specific performance. The judgment in the case of *Shashi Dhawan* (supra) as well as that in the case of *Ansal Buildwell Ltd.* (Supra) have already been taken into consideration while deciding the application under Order 7 Rule 11 CPC and as per the said judgments, it has been observed that the real intention in seeking the relief of mandatory injunction is of specific performance of the agreement and the only issue is with respect to the payment of ad valorem Court fee. In the present case, on an objection raised on behalf of defendants No.18 and 19, the ad valorem court fee has been duly deposited by the respondents No.1 and 2. It will be relevant to note that in the present case, it is not in dispute that the issues were not framed on the date when the application under Order 6 Rule 17 CPC was filed and even till date, issues have not been

framed and thus the trial has not commenced. All the petitioners have filed their amended written statements after the said amendment was allowed. There is no objection raised by the petitioners to the effect that the said amendment is barred by limitation.

44. A perusal of the application dated 18.11.2021 (Annexure P-6) filed by the petitioners under Order 7 Rule 11 CPC for rejection of the plaint would show that in paragraph 4 of the said application, which has been reproduced hereinabove, the petitioners have themselves taken the objections that the plaintiffs are trying to evade the affixing of appropriate stamp duty/ad valorem Court fee as the plaintiffs are praying for issuance of directions to take steps in compliance of the agreement in question and are thus, seeking the relief of execution of the sale deed and for the said purpose, the plaintiffs are liable to pay Court fee as per the value of the property. It is while accepting the said objections that in the order dated 10.10.2022, it was observed by the trial Court that in effect the suit filed by the plaintiffs was for specific performance of the agreement to sell dated 22.08.2020 and thus directed the plaintiffs to affix the ad valorem Court fee, which has been duly affixed on 09.11.2022. The argument thus sought to be raised on behalf of the petitioners to the effect that the trial Court has made a new case for the plaintiffs is completely misconceived and deserves to be rejected. Moreover, the amendment which has been sought is necessary for the proper and final adjudication of the case and for determining the real question in controversy. The plaintiffs had already filed a suit for mandatory injunction directing defendants No.1 to 16 to execute the sale documents in compliance of the agreement dated 22.08.2020 and had further prayed for injunction, restraining the defendants No.1 to 16 from alienating the land to any one except the plaintiffs. In the said suit, other

prayers have also been made. The pleadings in the entire plaint shows that the plaintiffs have a cause of action to file the suit against all the defendants. Within the period of limitation and prior to the issues being framed, the application dated 18.08.2023 (Annexure P-12 along with CR-1510-2024) has been filed by the petitioners in which primarily the head note and the prayer clause is sought to be changed. Certain, consequential changes are also sought in paragraph 14 and 18 of the plaint so as to make a reference with respect to the earlier suit of mandatory injunction and the present prayer of specific performance. The body of the remaining entire plaint has been kept as the same. In similar circumstances, the Co-ordinate Bench of this Court in the case of Saroj (supra) had allowed the application filed by the plaintiffs therein under Order 6 Rule 17 CPC for amendment of the plaint. Even in the said case, a suit for mandatory injunction was filed and thereafter, an application under Order 6 Rule 17 was filed for converting the same from mandatory injunction to specific performance and the said application was dismissed by the trial Court by observing that the same was time barred as it had been filed after a period of three years. A Co-ordinate Bench of this Court had observed in the said case that the relief of mandatory injunction in strict sense is to get the enforcement of the agreement to sell under the colour of mandatory injunction and the real intention is to seek specific performance and the only issue is regarding the Court fee and once the said Court fee has been affixed, then the impediment regarding the same is also cleared and thus, the revision petition was allowed. The relevant portion of the said judgment is reproduced hereunder:-

“6. Thereafter, petitioner filed an application under Order 6 Rule 17 CPC for change of title of the suit from mandatory injunction to specific performance. The trial Court vide the impugned order dismissed the application on the ground that

the cause of action for seeking specific performance has become time barred as the application has been filed beyond the period of three years”.

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11. *Mandatory injunction seeking direction for execution of a sale deed is act of euphemism. In strict sense it is not a relief of mandatory injunction, rather aim is to get the enforcement of agreement to sell under the colour of mandatory injunction. Real intention is to seek specific performance for which only issue of 6 of 8 court fee is to be seen. The plaintiff has already affixed the ad valorem court fee, therefore, the impediment in that context has already been cleared and no limitation is attracted as the petitioner does not wish to change the body of the plaint and cause of action. In such a scenario, the limitation would be a mixed question of law and facts and can only be considered during course of trial”.*

45. The Special Leave to Appeal(c) No.1828 of 2020 against the said judgment has also been dismissed by the Hon’ble Supreme Court vide judgment dated 11.08.2021. The relevant portion of the said SLP is as under:-

“ *The respondent filed a **suit for mandatory injunction**. An application was filed by the respondent for an amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC') which was dismissed by the Trial Court. The respondent filed a civil revision before the High Court. The High Court by the impugned judgment allowed the civil revision. Therefore, the petitioner is before this Court.*

Learned counsel appearing for the petitioner submitted that by the application filed by the respondent the entire cause of action is altered by the amendment sought to be made to the plaint. The suit for mandatory injunction is altered into one of specific performance.

.....The High Court rightly accepted the submission of the respondent that the tenor of her case is to get the agreement to sell enforced. In respect of the point of

limitation raised by the petitioner, the High Court concluded that limitation is a question of law and facts and, could be raised during the course of trial.

We are informed by the learned counsel for the petitioner that the plaintiff's evidence has been closed. We reiterate the finding recorded by the High Court that the petitioner is at liberty to raise the ground of limitation at the stage of arguments. With the above observations, the special leave petition stands dismissed. Pending application(s), if any, shall stand disposed of".

46. The said judgment would apply on all fours in the present case and additionally it is relevant to mention that in the present case, there is no objection raised by the petitioners that the amendment sought was barred by limitation.

47. That even in the case of Joginder Pal @ Joginder Pal Sharma (supra), a Co-ordinate Bench of this Court had upheld the order of the trial Court vide which the application under Order 6 Rule 17 CPC was allowed and the suit for mandatory injunction was permitted to be amended to a suit for specific performance on depositing of appropriate Court fee. The relevant portion of the said judgment is reproduced as under:-

"In the present case, the plaintiff-respondent had filed suit for mandatory injunction basing reliance on agreement to sell dated 28.04.2007. The trial Court directed the plaintiff to affix appropriate Court fee as virtually the plaintiff had sought the relief of specific performance of agreement to sell in question. Thereafter, plaintiff affixed the necessary Court fee and sought permission to amend the plaint and sought relief of possession by way of specific performance of agreement to sell in question. Although, the amendment in the plaint was sought by the plaintiff after the trial had commenced but the amendment sought by the plaintiff would not change the nature of the suit".

So far as the point of limitation is concerned, the Trial Court has held that the said aspect would be decided after the parties lead their evidence. Thus, the defendant will not suffer any prejudice on account of amendment of the plaint sought by the plaintiff. Plaintiff has already affixed the necessary Court fee as directed by the Trial Court and in these circumstances, it was just and expedient to allow the plaintiff to seek the relief of possession by way of specific performance of agreement to sell in question”.

48. That a Co-ordinate Bench of this Court in the case of Smt. Sarvo and others (supra) also permitted the plaintiffs to change the frame of the suit from mandatory and permanent injunction to that of specific performance. In the said case, the application under Order 6 Rule 17 was allowed at the appellate stage and the matter was remanded to the trial Court with a direction to entertain the amended plaint and the said order was upheld and revision petition against the same was dismissed. The relevant portion of the said judgment is reproduced as under:-

*“8. Every case has to be governed by its own facts. In the present case, **it is true that earlier the plaintiff filed a suit for mandatory and permanent injunction, but the cause of action was the basis of the agreement. Only the frame of the suit was not proper. The cause of action was never changed. In the present case, it is pertinent to mention that in the agreement the parties never agreed that agreement will be performed on a particular date.** Moreover, we all know that in an agreement of sale with regard to the immovable property time is not invariably the essence of the contract. There is nothing on the record to suggest that defendants No. 1 to 5 at any point of time had given a written notice to the plaintiff that they are not interested in the discharge of their obligation under the agreement. **If the frame of the suit is sought to be changed by not changing the cause of action, no illegality has been committed by the first Appellate Court in allowing the amendment under Order 6 Rule 17 C.P.C***

when the defendants have been validly and reasonably compensated with a heavy costs of Rs. 4,000/-.

In this view of the matter, I do not see any merit in this revision and the same is hereby dismissed with no order as to costs”.

49. Thus in a large number of cases, this Court has repeatedly allowed the amendments as has been allowed in the present case by the trial Court. Thus, the impugned order is in accordance with settled law. Moreover, this Court is of the opinion that the amendment sought is necessary for proper and final adjudication of the case and for determining the real question in the controversy and as a matter of settled law, all such amendments should be allowed and at that stage, the Court is not required to go into the correctness or falsity of the case set up in the amendment nor it is required to go into the merits of the amendment. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.*** reported as ***2006(2) RCR (Civil) 577.***

The relevant portion of the said judgment is reproduced hereinbelow:-

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of

allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.

50. The judgment of the Hon'ble Supreme Court in the case of Asian Hotels (North) Ltd. (supra) relied upon by the petitioners is on completely different facts and thus does not further the case of the petitioners. In the said case, the plaintiffs who were alleging themselves to be licensee of individual shops since 1983 had filed a commercial suit against the licensor who was seeking revocation of the license. In the said suit, a decree for declaration to the effect that the license in favour of the plaintiffs in respect of the shops was perpetual was prayed for. The objection with respect to the suit being not maintainable in view of Section 8 of the Arbitration and Conciliation Act, 1996 was taken by the defendants in the said case and subsequently, an amendment was sought by the plaintiffs in the same to challenge the mortgages which had been created in favour of different banks/financial institutions since 1982 i.e. prior to the license in favour of the plaintiffs and a prayer was made that the said mortgages in favour of the banks/financial institutions be declared as void. The said banks/financial institutions were also sought to be impleaded as parties and thus the suit was completely sought to be changed inasmuch as the

simplicitor suit filed against the shop owner on the issue as to whether the license was revocable or not, was sought to be converted into a suit against various banks/financial institutions on the plea that the mortgages which were executed prior to the plaintiffs occupying the said premises and to which the plaintiffs were not a party, were void. It is in the said circumstances, the Hon'ble Supreme Court did not allow the application for amendment. The relevant portion of the said judgment is reproduced as under:-

***“7.2 At the outset, it is required to be noted that mortgages have been created in favour of different mortgage banks/ financial institutions since 1982 onwards which have been extended and / or rolled over, refinanced and replaced from time to time. The mortgages are created not only with respect to the shops / premises occupied by the original plaintiffs, but with respect to the entire premises / Hyatt Residency Hotel. The respective original plaintiffs are granted licenses for individual shops which are part of entire premises. According to the appellant, first mortgage was created in the year 1982. At that time, none of the original plaintiffs were license holders. They have been granted license for individual shops at the premises from 1983 onwards to various shopkeepers including respondents original plaintiffs. The appellant, being owner – licensor, has terminated the respective licenses granted in favour of respective license holders – original plaintiffs. The revocation of the license is subject matter of respective suits. Therefore, the only controversy / issue in the respective suits is with respect to revocation of the respective licenses. By way of an amendment of the plaint the plaintiffs now want to challenge the mortgages / charges on the entire premises created by the appellant. As such, the original plaintiffs are not at all concerned with the mortgages created by the appellant which is required for the continuous development of the hotel. By the purported amendment, the original plaintiffs have now prayed to declare that all the mortgages / charges created on the*”**

premises as void abinitio. Even such a prayer can be said to be too vague. How the original plaintiffs can now can be permitted to challenge various mortgages / charges created from time to time. At this stage, it is required to be noted that even under the License Agreement (clause 13) the Licensor shall have the right to create charges / mortgages as and by way of first charge on its land, premises and the buildings (including shops) constructed and to be constructed, in favour of financial institutions and banks as security for their terms loan advanced / to be advanced to the licensor for the completion of its hotel project. Therefore, in fact original plaintiffs being the licensee are aware that there shall be charges / mortgages on the entire premises and the buildings including the shops. In that view of the matter, now after a number of years, plaintiffs cannot be permitted to challenge the mortgages / charges created on the entire premises including shops.

9.1 Even otherwise, High Court has materially erred in relying upon the decision in the case of Kasturi (supra). In the case of Kasturi (supra) before this Court the suit was for specific performance of the agreement to sell and the subsequent purchasers purchased the very property for which decree for specific performance was sought. Therefore, on facts said decision is not applicable to the facts of the case on hand”.

51. From the above, it is apparent that the facts of the abovesaid case were different from the facts of the present case and thus the said judgment would not further the case of the petitioners. The argument raised by the petitioners on the aspect of the plaintiffs seeking leave of the trial Court under Order II Rule 3 CPC to sue for specific performance and/or recovery and other reliefs at a later stage after the completion of investigation by the police in the compliant filed by the plaintiffs against defendants No.1 to 16, would also not in any way further the case of the petitioner but would rather support the case of the plaintiffs. It would be relevant to note that even as per the case of the

petitioners, the complaint which was given to the police was consigned to the record room on 04.08.2021 i.e. after the filing of the suit on 07.05.2021. Moreover, making averments with respect to seeking leave of the Court as a matter of abundant precaution would not in any way take away the right of the plaintiffs to seek amendment of the plaint, moreso, when the same is necessary.

52. It would be further relevant to note that CR-2917-2024 has been filed on 30.05.2024 challenging the order dated 29.11.2023 after the delay of more than five months from the date of passing of the impugned order and prior to the filing of the said revision, a Civil Revision No.2382 of 2024 was filed on behalf of some of the petitioners along with other defendants and in the said case, challenge was made to the order vide which the defence of the petitioners had been struck off and the only prayer made in the said revision petition was with respect to grant of one opportunity to file the amended written statement which was granted by a Co-ordinate Bench of this Court vide order dated 22.04.2024 subject to payment of cost of Rs.10,000/-. The said conduct also goes against the petitioners in CR-2917-2024.

53. This Court on the basis of the above facts and circumstances is of the opinion that the impugned order dated 29.11.2023 is in accordance with law and deserves to be upheld and both the revision petitions challenging the said order deserves to be dismissed and accordingly, both the revision petitions i.e. CR No.1510-2024 and CR-2917-2024 are dismissed.

54. All the pending miscellaneous applications, if any, be disposed of in view of the abovesaid order.

August 14, 2024
naresh.k/pawan/davinder

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes