

134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-722-2023(O&M)
Date of decision :04.04.2024

M/s Anatam Construction and others ...Petitioners

Vs.

Debasis Mandal ...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhinav Sood, Advocate
for the petitioners.

ANIL KSHETARPAL, J. (Oral)

1. In this revision petition, the defendants assail the correctness of interlocutory order passed by the trial Court while allowing application under Order 6 Rule 17 read with Section 151 CPC while permitting the plaintiff to amend the plaint.
2. In order to comprehend the issue involved in the present case, the relevant facts in brief are required to be noticed.
3. The respondent herein (plaintiff before the trial Court) filed a suit for mandatory injunction against the colonizer/developer. In substance, he made a prayer that the defendants be directed to release the payment of Rs. 62,96,498/- alongwith interest @ 18% per month from the date of its due till realization of the whole amount. This case is based upon the allegations that the defendants have failed to deliver the possession of the flat as promised. The defendants filed application under Order 7 Rule 11 CPC claiming that the suit for mandatory injunction is not maintainable. During the pendency of the aforesaid application, the plaintiff has filed application under 6 Rule 17 CPC, which has been allowed. The plaintiff has been permitted to amend the plaint in

order to seek relief of recovery of the amount by paying *ad valorem* fee.

4. The correctness of the order is challenged in this revision petition.
5. Learned counsel representing the petitioners submit that the suit for mandatory injunction was not maintainable and hence, it has been wrongly allowed to be converted into a suit for recovery. He further submits that now the plaintiff is claiming recovery of approximately Rs. 17 lakhs alongwith interest whereas, originally the prayer was to recover Rs. 62,96,498/-.
6. This Court has considered the submission of learned counsel representing the petitioners.
7. In the impugned order, it would be noticed that the defendants (petitioners) deposited an amount of Rs.44,34,582/- in the loan account of the plaintiff. Thus, the aforesaid amount has been adjusted by the plaintiff while filing the suit for recovery. It is evident that the defendants while filing application under Order 7 Rule 11 CPC themselves claimed that the suit for mandatory injunction was not maintainable. In order to remove the defect, the plaintiff has filed application for permission to amend the plaint, which has been permitted. Originally, also the plaintiff has prayed for recovery of the amount though, it was styled as relief of mandatory injunction. Now, proper prayer has been made.
7. Keeping in view the aforesaid facts, no ground for interference is made out.
8. Dismissed.

04.04.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

(ANIL KSHETARPAL)
JUDGE
No
No