



CR-6839-2024

1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-6839-2024

Date of decision : 25.11.2024

Malkiat Singh

... Petitioner

Versus

Sandeep Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sanjeev Kumar Aggarwal, Advocate,
Mr.Nissim Aggarwal, Advocate,
Mr.Ojas Bansal, Advocate and
Mr.Tejas Bansal, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.11.2024 (Annexure P-1) passed by the Additional Civil Judge (Sr.Div.), Sirsa, vide which the application for cross-examination of the witnesses of the plaintiffs (Annexure P-9) filed by defendant no.1 has been dismissed.

2. Learned counsel for the petitioner has submitted that an additional issue had been framed by the trial Court on 21.10.2024 to the effect that "Whether the plaintiff is entitled for a refund of earnest money of Rs.43,50,000/- alongwith interest at 18% per annum from the date of payment of earnest money till its realization as prayed for?OPP". It is



CR-6839-2024

2

petitioner wished to cross-examine all the witnesses of the plaintiff on the said issue and thereafter, had moved an application for cross-examining all the said witnesses, which has been dismissed vide order dated 11.11.2024. It is stated that the said application was meritorious and should have been allowed and the impugned order dismissing the same, deserves to be set aside.

3. This Court has heard the learned counsel for the petitioner and has perused the paper book.

4. Respondents no.1 and 2 had filed a suit for possession by way of specific performance of the contract of sale in respect of the suit property. The issues in the present case were framed on 03.09.2015 and it is not in dispute that the plaintiffs have led their entire evidence and that the petitioner had cross-examined the witnesses of the plaintiffs. An application was moved by the plaintiffs for amendment of the prayer clause of the plaint and in the said application, no new fact was mentioned and only an alternate prayer for refund of the earnest money was prayed and the said prayer was based on the averments which were already made in the plaint. The said application was allowed vide order dated 23.09.2024 and the following additional issue was framed:-

“Whether the plaintiff is entitled for a refund of earnest money of Rs.43,50,000/- alongwith interest at 18% per annum from the date of payment of earnest money till its realization as prayed for?OPP”

A perusal of the said additional issue would show that the onus of proving the said issue was on the plaintiffs. A further perusal of the order

**CR-6839-2024****3**

dated 21.10.2024 would show that the counsel for the plaintiffs had submitted that he did not wish to lead any evidence qua the additional issue and accordingly, the case was then fixed for defendant evidence. In spite of the fact that the onus of the said additional issue was on the plaintiffs and the plaintiffs did not wish to lead any evidence on the same, yet only to delay the proceedings, the petitioner had filed an application for cross-examination of all the witnesses of the plaintiffs. The said application was opposed by the plaintiffs by filing a reply.

5. The trial Court vide order dated 11.11.2024 had dismissed the said application on the ground that by virtue of the amendment, the only amendment which had been sought was in the prayer clause and an alternate relief based on the same pleadings had been prayed. It was further observed that no new fact had been pleaded and thus, no ground was made to allow the petitioner to cross-examine the witnesses of the plaintiffs, who have already been cross-examined by the petitioner earlier and that the additional issue was only a formal amendment and the present application had been filed just to delay the proceedings. From a perusal of the file, it is apparent that the additional issue which was framed, was based on the same facts as were pleaded in the original plaint and only an alternate prayer for return of money was sought, on which the additional issue was framed. Thus, the impugned order dated 11.11.2024 rejecting the said application is in accordance with law.

6. Additionally it would be relevant to note that the onus of the additional issue which has been framed is on the plaintiffs and counsel for



CR-6839-2024

4

the plaintiffs has made a statement that he does not wish to lead any evidence qua the said additional issue. Once no additional evidence is being led by the plaintiffs on the additional issue, the question of cross-examination of the plaintiffs witnesses on the aspect of the said additional issue does not arise. It is not in dispute that the plaintiffs' witnesses who had appeared in support of the original plaint have already been cross-examined by the petitioner-defendant no.1. Apparently, the present application has been filed to delay the proceedings and is meritless.

7. Keeping in view the abovesaid facts and circumstances, the impugned order being legal and in accordance with law, deserves to be upheld and the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

November 25, 2024.
Davinder Kumar

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