

**CR-1174-2023****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(209)****CR-1174-2023****Date of decision: - 16.07.2025****Inder Singh****....Petitioner****Versus****Balwan Singh****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Sanjay Mittal, Advocate,
for the petitioner.

Mr. Sudhir Aggarwal, Advocate
for the respondent.

**********VIKAS BAHL, J. (ORAL)**

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 07.11.2022 (Annexure P-3) passed by the Civil Judge (Junior Division), Sohna vide which the application filed by the petitioner/defendant under Order VII Rule 11 CPC for rejection of plaint has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that on 22.02.2023 after noticing the arguments raised by learned counsel for the petitioner, the Co-ordinate Bench of this Court was pleased to issue notice of motion and had also directed the trial Court to adjourn the



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proceedings beyond the date fixed by this Court.

3. The order dated 22.02.2023 passed by the Co-ordinate Bench, which has been highlighted by learned counsel for the petitioner, is reproduced as under: -

“Learned counsel for the petitioner argues that in the impugned order dated 07.11.2022, it has already been noticed by the trial Court that the property in question, the specific performance of which is being sought, is situated in District Rewari whereas the suit has been filed within the jurisdiction of District Gurgaon however without considering Section 16 of the Code of Civil Procedure according to which, for the determination of any right or interest in the movable property, the same has to be instituted within the local limits of both jurisdiction the property is situated, the order dated 07.11.2022 has been passed by ignoring the said provisions of law.

Notice of motion for 17.04.2023.

Dasti only.

The trial Court is requested to adjourn the proceedings of the suit beyond the date fixed by this Court in the present case.

February 22, 2023”

4. Learned counsel for the petitioner has further submitted that in the present case, a suit for possession by way of specific performance along with consequential relief of permanent injunction had been filed by the respondent/plaintiff before the Additional Civil Judge (Senior Division), Sohna, even though the property in question was situated in Tehsil Bawal, District Rewari. It is argued that since in the suit a decree for possession by way of specific performance directing the defendant to execute and register the sale deed in favour of the plaintiff and also for vacant possession of the suit property which was situated in Tehsil Bawal,



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District Rewari was sought, thus, as per settled law, the suit was only maintainable in Tehsil Bawal, District Rewari. It is further argued that the present petitioner had filed an application under Order VII Rule 11 CPC and the said point had specifically been raised by him in the same but the trial Court vide order dated 07.11.2022 had observed that since as per the averments in the plaint, the agreement was executed at Sohna i.e. within the territorial jurisdiction of Sohna, thus, the said objection raised by the petitioner was rejected. It is submitted that the said reasoning given in the impugned order is contrary to the law laid down by the Hon'ble Supreme Court in the case titled as “Harshad Chiman Lal Modi Vs. DLF Universal & Anr.”, *reported as 2005(7) SCC 791*. It is further submitted that in the said judgment, in a case of specific performance, it was observed by the Hon'ble Supreme Court that the suit would be maintainable only where the suit property is situated when right against the said property is sought. It is submitted that in the said case, the order passed by the trial Court as well as by the High Court returning the plaint for presentation to proper court was upheld by the Hon'ble Supreme Court. It has been fairly submitted that although the present application (Annexure P-2) had been filed by the petitioner under Order VII Rule 11 CPC for rejection of the plaint, but in view of the law laid down by the Hon'ble Supreme Court in the above-said judgment, the plaint would not be liable to be rejected but would be liable to be returned to the plaintiff for presentation to the proper Court having the jurisdiction in the case, in accordance with the provisions of Order VII Rule 10 and 10-A of CPC.



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ARGUMENTS ON BEHALF OF THE RESPONDENT

5. Learned counsel for the respondent, on the other hand, has submitted that the impugned order dated 07.11.2022 has been rightly passed and has further submitted that in the present case, a perusal of the averments made in the plaint would show that the agreement to sell although was with respect to property in Tehsil Bawal, District Rewari but was executed in Sohna and thus, the Court at Sohna would also have the jurisdiction to try the suit for possession by way of specific performance filed by the respondent/plaintiff. It is further submitted that it had further been averred in para 4 of the plaint that another suit for permanent injunction was filed by the respondent/plaintiff against the present petitioner/defendant before Civil Judge (Junior Division), Sohna and the said proceedings were also with respect to the property in question and the same agreement was in question and in the said case, no objection was taken by the petitioner with respect to territorial jurisdiction of Sohna and thus, it is apparent that the plea raised by the petitioner for rejection/return of plaint is only to delay the proceedings. It is prayed that the present revision petition be dismissed and the impugned order dated 07.11.2022 be upheld.

ANALYSIS AND FINDINGS

6. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order which has been passed is illegal and deserves to be set aside and the prayer made by the petitioner to the effect that the plaint deserves to be returned in the



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present case in accordance with the provisions of Order 7 and Rule 10 and 10-A CPC deserves to be allowed for the reasons stated herein after.

7. It is not in dispute that the respondent/plaintiff had filed a suit for possession by way of specific performance seeking direction to the defendant/present petitioner to execute the sale deed in favour of the plaintiff and also for delivering vacant possession of the suit property which is admittedly situated at Tehsil Bawal, District Rewari. The relief sought in the present suit is reproduced herein below: -

“That the plaintiff humbly prayed that a decree for possession by way of specific performance directing the defendant to execute and Regd. the Sale deed in favour of the plaintiff on payment of balance sale consideration and to put the plaintiff into peaceful vacant possession of the suit property alongwith consequential relief of permanent injunction by restraining the Defendant from creating any third interest over the suit property fully detailed and described in para no. 1 of the plaint in any manner like alienating, agreement, lease, mortgage etc. may kindly be passed in favour of the plaintiff and against the Defendant with cost.

Any other relief which this Hon'ble Court deems fit and proper may also be granted in fovour of the plaintiff and against the Defendant.”

8. The relief sought in the present suit was with respect to the property which as stated in para 1 of the plaint was situated at Tehsil Bawal, District Rewari. The present petitioner/defendant in his application (Annexure P-2) had specifically raised an objection that the trial Court lacks the territorial jurisdiction to decide the case as the property was not situated at Sohna. The said objection had been rejected by the trial Court by observing that even though the property, which is the



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subject matter of the agreement to sell of which specific performance is sought in the suit, was situated at District Rewari but since it is the case of the plaintiff/respondent in the plaint that the agreement was executed at Sohna, thus, the Court at Sohna had the territorial jurisdiction to decide the case. The said impugned order and the reasoning given in the same, is against the law laid down by the Hon'ble Supreme Court in case of **Harshad Chiman Lal Modi (supra)**. In the above-said judgment, the Hon'ble Supreme Court after considering Sections 15 to 20 of CPC, which provides for “place of suing” had observed that the suit for specific performance with respect to immovable property shall be instituted in the Court which has the jurisdiction where the property/“res” is situated and since in that case the property was situated at Gurgaon and even though the agreement was entered into at Delhi and the payment was also made at Delhi and the parties had also agreed that the Delhi Court alone would have the jurisdiction in the matters arising out of the transaction, yet, the Hon'ble Supreme Court upheld the decision of the trial Court as well as that of the Delhi High Court by observing that the Civil Court of Delhi had no jurisdiction to try the suit and had observed that the plaint should be returned to the plaintiff for presentation to the proper Court.

9. The present case of the petitioner/defendant is on a higher footing than that of the defendant in the above-said case, inasmuch as, in the above said case apart from there being admission with respect to the agreement having been entered into in Delhi and the payment having been made in Delhi, there was no dispute about the fact that the parties had



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agreed that Delhi alone would have jurisdiction with respect to the matters arising out of the transaction, which is not there in the present case. The Hon'ble Supreme Court in the said case had observed that in a case of specific performance where the right with respect to immovable property was being claimed, then, Section 16 of CPC would apply and as per the said provision, the suit was required to be instituted in the Court within the local limits of whose jurisdiction the property is situated. The relevant part of the said judgment is reproduced herein below: -

*"1. This appeal is filed by the appellant against the order passed by the Additional District Judge, Delhi on 25-5-1998 in Suit No. 1036 of 1994 and confirmed by the High Court of Delhi on 1-11-1999 in Civil Revision Petition No. 506 of 1998 **holding that the Delhi Court has no jurisdiction to try the suit and the plaint should be returned to the plaintiff for presentation to the proper court.***

*2. To appreciate the controversy raised in this appeal, admitted and/or undisputed facts may be noted. The appellant-original plaintiff entered into a "plot buyer agreement" ("agreement" for short) with DLF Universal Limited, Respondent 1, original Defendant 1 on 14-8-1985 for purchase of a residential plot **admeasuring 264 sq m in Residential Colony, DLF Qutub Enclave Complex, Gurgaon, Haryana.** The agreement was in the Standard Form Contract of the first respondent. **According to the appellant, the agreement was made in Delhi. The Head Office of Respondent 1 was situated in Delhi. Payment was to be made in Delhi. The plaintiff paid an amount of Rs 12,974 (Rupees twelve thousand nine hundred seventy-four only) towards the first instalment.** It is the case of the appellant that payment was made by him in instalments as per the Schedule to the agreement. In spite of the payment of amount, the first respondent unilaterally and illegally cancelled the agreement on 4-4-1988 under the excuse that the appellant had not paid dues towards construction of Modular House to Respondent 2, original Defendant 2 DLF Builders and Developers Pvt. Ltd. The appellant objected to the illegal*



action of the first respondent and sent a legal notice through an advocate calling upon the first respondent to carry out his part of the contract but Respondent 1 replied that the agreement had been cancelled and nothing could be done in the matter. **The appellant, in the circumstances, was constrained to file Suit No. 3095 of 1988 on the original side of the High Court of Delhi for declaration, specific performance of the agreement, for possession of the property and for permanent injunction.**

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13. Mr Rohatgi, Senior Advocate appearing for the respondents, on the other hand, supported the order passed by the trial court and confirmed by the High Court. **He submitted that the suit relates to specific performance of agreement relating to immovable property. In accordance with the provisions of Section 16 of the Code, such suit can be instituted where the immovable property is situate.**

“[Section 16. Suits to be instituted where subject-matter situate.-Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) **for the determination of any other right to or interest in immovable property,**
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, **shall be instituted in the court within the local limits of whose jurisdiction the property is situate:**

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant



actually and voluntarily resides, or carries on business, or personally works for gain.”

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*14. Having heard learned counsel for the parties and having considered the relevant provisions of the Code as also the decisions cited before us, in our opinion, the order passed by the trial court and confirmed by the High Court deserves no interference. **As stated above, it is an admitted fact that the suit relates to the recovery of immovable property, a plot admeasuring 264 sq m in the Residential Colony, DLF Qutub Enclave Complex, Gurgaon. It is not in dispute by and between the parties that the property is situate in a Haryana. It is no doubt true that the defendants are having their Head Office at Delhi. It is also true that the agreement was entered into between the parties at Delhi. It also cannot be denied that the payment was to be made at Delhi and some instalments were also paid at Delhi. The pertinent and material question, however, is in which court a suit for specific performance of agreement relating to immovable property would lie?***

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*16. **Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment.** The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which h the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam*

i.e. by arrest of the defendant or by attachment of his property.

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19. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing Defendant 1 to execute the sale deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application.

20. In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that the Delhi Court alone had jurisdiction in the matters arising out of the transaction also has no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.

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37. In the instant case, Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of the Delhi Court and in the original written statement, they had admitted that the Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was i.e. the Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor can it confer jurisdiction on the Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated outside the jurisdiction of the Delhi Court, the trial court was right in holding that it had no jurisdiction.”

10. The law laid down in the above-said case applies on all fours in the present case as it is not disputed that the property in question

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regarding which the suit for possession by way of specific performance had been sought is situated in Tehsil Bawal, District Rewari. The arguments raised by learned counsel for the respondent/plaintiff and the reasoning given in the impugned order with respect to the fact that as per the averments made in the plaint, the consideration had been paid in Sohna and another suit had been filed in Sohna, in which no objection had been raised by the petitioner regarding territorial jurisdiction are irrelevant factors, as the sole factor which is required to be considered in the facts and circumstances of the present case is as to where the suit land is situated, which is admittedly situated at Tehsil Bawal, District Rewari.

11. Although, the original prayer in the application (Annexure P-2) is for rejection of the plaint but it has been fairly stated on behalf of the petitioner that in the given facts and circumstances, the highest prayer that the petitioner could seek in view of the law laid down by the Hon'ble Supreme Court is for returning of the plaint. It is always open to a party to seek a lesser relief than the relief prayed for and it is always open to the Court to grant relief on the basis of the facts and circumstances in the case, more so, when the relief pressed is lesser than the relief claimed. Thus, in the said facts and circumstances, the present revision petition is partly allowed and the impugned order dated 07.11.2022 is set aside and the trial Court is directed to return the plaint to the plaintiff with liberty to the plaintiff to present the same to the Court in which the suit should have been instituted i.e., the Court of Competent jurisdiction.

12. The parties through counsel are directed to appear before the

trial Court on 07.08.2025 along with the copy of the present order for further compliance/proceedings.

July 16, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes