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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-4753-2023 (O&M)

Date of Decision : 08.01.2025

Birendra Kumar Chourasia

... Petitioner(s)

Versus

Taneja Developers & Infrastructure Ltd & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Hitesh Malik, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 31.05.2023 whereby the application filed by the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for recovery of Rs.42,80,000/- alongwith interest @ 18% per annum from 28.12.2016 till actual realization. Written statement was filed on behalf of the defendant-respondents wherein a specific statement was made that they were ready and willing to allot a plot to the plaintiff-petitioner in Sectors 37, 38 and 39, but the plaintiff-petitioner had refused to accept the same and had also refused to enter into the plot-buyer agreement. However, the plaintiff-petitioner was insisting on an allotment in Sector 23, Panipat. It was further stated that in order to avoid any litigation, they were ready to allot a plot to the plaintiff-petitioner in

Sector 23, Panipat at the agreed rate subject to a limited period offer after filing of the written statement. However, it was denied that there was any agreement between the parties to allot a plot in Sector 23, Panipat and to deliver possession by October 2014. The said written statement was filed on 24.08.2017. The plaintiff-petitioner did not encash upon the offer made by the defendant-respondents and chose to continue with the suit. In the year 2022 the application for amendment of the plaint was filed under Order 6 Rule 17 CPC wherein the plaintiff-petitioner wanted to amend the headnote by adding "*Suit for Mandatory Injunction for allotment of a residential plot at good location at Sector 23, TDI, Panipat*" and had also wanted to add para 9-A which reads as under :

"9-A. That after receiving an amount of Rs.27,50,000/- from the plaintiff the defendants never called him for execution of buyer agreement through written notice and did not exhibited their readiness and willingness for allotment of the plot to the plaintiff for which they are legally bound. Even after filing of written statement, the defendants kept mum and took no step for allotment of plot and execution of Buyer Agreement, so the defendants have been playing hide and seek games and they acted in violation of all the provisions contained in The Real Estate (Regulation and Development Act, 2016) and other rules, regulations, Acts and by laws applicable on the subject under litigation. Even the defendants have violated the rules natural justice, fair play and equity."

Reply was filed to the said application. Vide the impugned order, the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner wishes to amend the pleading only in view of the written statement filed by the defendant-respondents wherein they had themselves offered a plot. It is further the contention of the learned counsel that the plaintiff-petitioner is ready and willing to purchase the plot and, hence, necessitating amendment in the pleading.

4. *Per contra*, the learned counsel for respondent Nos.1 and 2 would contend that written statement was filed in the year 2017 and in the reply filed to the application for amendment, it had categorically been stated that now there is no plot available. In any case, the learned counsel while referring to para 7 of the written statement has pointed out that the offer was a limited period offer and since the plaintiff-petitioner did not avail of the offer, now the plaintiff-petitioner cannot be permitted to change the nature of the suit from that of a suit for recovery to a suit for mandatory injunction.

5. I have heard the learned counsel for the parties.

6. In the present case no doubt an offer was made by the defendant-respondents to allot a plot to the plaintiff-petitioner, however, the plaintiff-petitioner failed to avail of the offer and continued to proceed with the suit. From 2017 to 2022 there was a complete silence as far as the amendment was concerned. It is only in the year 2022 that the amendment application was filed.

7. On a query put to the learned counsel for the plaintiff-petitioner as to why the application was not filed earlier since it is the case set up that

the amendment was necessitated because of the stand taken in the written statement, the learned counsel states that the plaintiff-petitioner was not aware of the contents of the written statement as the written statement remained with the counsel who did not bring it to the notice of the plaintiff-petitioner. At this stage the learned counsel for the defendant-respondents has pointed out that in the cross-examination, which was conducted on 19.09.2019, the plaintiff-petitioner had refused to accept the offer for allotment of a plot and therefore it did not lie in his mouth to now say that he was not aware of the written statement. By way of the present amendment application the plaintiff-petitioner is wanting to change the entire nature of the suit from that of a suit for recovery to one for mandatory injunction, which cannot be permitted. The amendment sought does not fall within the parameters as laid down by the Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]**. The amendment, if allowed at this stage, would amount to a *de novo* trial which cannot be permitted in law.

7. In view of the above, I do not find any merit in the present revision petition. The same is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO