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

CR-5112-2025

Date of decision : 30.10.2025

SHAMA CHHABRA

...Petitioner

Versus

HARBHAJAN SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Divanshu Jain, Advocate
for the petitioner.

Mr. Vikas Chatrath, Sr. Advocate with
Ms. Haridhi Aggarwal, Advocate and
Mr. Abhishek Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 12.08.2024 passed by Civil Judge (Senior Division), SAS Nagar (Mohali) whereby application filed by the petitioner/plaintiff seeking amendment of the plaint under Order VI Rule 17 CPC, stands declined.

2. Plaintiff filed a suit seeking decree of mandatory injunction. The defendants appeared and filed application under Order VII Rule 11 CPC pleading rejection of plaint for want of appropriate Court Fee. The plaintiff made deficiency good and deposited the proper Court Fee of Rs. 3,33,997/- on 05.10.2021. The present application under Order VI Rule 17 CPC has



been moved seeking amendment of the plaint. The amendment sought is in the prayer clause. The plaintiff seeks substitution of relief of mandatory injunction by relief of possession by way of specific performance. He also wants to add alternate relief of recovery.

3. The application has been declined by the Trial Court, holding that the proposed amendment is likely to change the nature of the suit. The trial has already commenced. Plaintiff i.e. PW1 has been partly cross-examined. Delay in filing the application has not been explained. The amendment at the belated stage cannot be allowed.

4. Counsel for the petitioner has drawn attention of this Court to the impugned order. He submits that the Court has rejected the application filed by the plaintiff only dealing with the plea w.r.t. raising prayer regarding alternate relief of recovery of amount paid to the defendants. The Court has passed order oblivious of the fact that, along with the amendment *qua* alternate relief, the plaintiff has also prayed for substitution of relief by way of mandatory injunction with that of specific performance. Had the Court been alive to that fact, the application would have been dealt in accordance with the parameters as adumbrated under Section 22 of the Specific Relief Act, 1963 (hereinafter referred to as 'the 1963 Act'), and the same could have been allowed at any stage. Counsel relies upon ratio of law laid down in the case of **Saroj (through her GPA Sunil Kumar @ Sunil Antil) vs. Joginder Singh and another, 2020(4) RCR(Civil) 118, Smt. Sarvo and others vs. Sunil Dewan and others, 2000(3) RCR(Civil) 486, Amar Singh**



vs. Kashmiri Lal, 2009(2) RCR(Civil) 173, Rajesh Kumar Aggarwal and others vs. K.K. Modi and others, (2006)4 SCC 385, Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2022 AIR (Supreme Court) 4256, Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) & others, 2024(4) RCR(Civil) 417, Man Singh Chauhan alias Man Singh and others vs. Bhanwar Singh and others, 2025 AIR (P&H) 1, Joginder Pal @ Joginder Pal Sharma vs. Yudhvir Singh – Civil Revision No.7064 of 2014, D/d 21.04.2015 and Des Raj vs. Sanjeev Kumar – CR No.6891 of 2011 D/d 05.12.2012.

5. Ld. Senior Counsel Mr. Chatrath has opposed the plea raised by counsel for the petitioner. He submits that the application was filed under Order VI Rule 17 CPC and not under Section 22 of the 1963 Act'. He submits that in order to attract the provisions of Section 22, the suit needs to be that for specific performance. Section 22 is not attracted wherein suit is for grant of mandatory injunction. He relies upon ratio of law laid down by Supreme Court in the case of **Basavaraj vs. Indira and others, (2024) 3 SCC 705, M. Revanna vs. Anjanamma (Dead) by Lrs. and others, 2019(2) RCR(Civil) 207, R.P.S. Associates vs. Om Parkash @ Hari Singh & others, 2012(5) RCR(Civil) 109, Rajkumar Guruwara (Dead) Thr. LRs vs. M/s S.K. Sarwagi & Co. Pvt. Ltd and another, (2008) 14 SCC 364, Nihal Singh vs. Savitri Bai and others, 2023(4) MPLJ 577 and S. Sundaram Pillai vs. V.R. Pattabiraman, (1985) 1 SCC 591.**



6. I have heard counsel for the parties and have carefully gone through records of the case.

7. The suit was initially filed with the following prayer clause:

“Suit under section 39 of Specific Relief Act, for passing the decree for Mandatory injunction may kindly be allowed and decree for mandatory injunction directing the defendant, to get the Agreement to Sell executed, as one Receipt cum Agreement was executed vide which it was agreed that one Plot No.1167, Block-B, LOI No.3840, Category IT-750 having size 256.66 Sq. Yds at Sector 83-A, IT City, Mohali for the total Sale consideration of Rs.1,46,50,000 by the Defendant in favour of the Plaintiff, in the interest of justice

Further Decree for suit for mandatory Injunction may kindly be passed directing the Defendant to get the Sale deed executed of Plot No.1167, Block-B, LOI No.3840, Category IT-750 having size 256.66 Sq. Yds at Sector 83-A, IT City, Mohali, as the Plaintiff is ready and is always ready and willing to get the Sale deed Executed in her favour and further has the ready money to pay to the Defendant the total amount of consideration, in the interest of Justice.

Further Decree for suit for mandatory Injunction may kindly be passed directing the defendants to withdraw his letters dated 30.01.2021, 10.02.2021 & 17.02.2021 vide which he has cancelled the Booking of the Plot in question and further has stated to Forfeit the amount of Receipt / Agreement in question, in the interest of Justice.

Further Decree for suit for Permanent Injunction may kindly be passed directing the defendant and his agent not to sale Phot No.1167, Block-B, LOI No.3840, Category IT-750 having size 256.66 Sq. Yds at Sector 83-A, IT City, Mohali till the pendency of the present suit, in the interest of Justice.

Further any order or direction which this Hon’ble court may deem fit in the present circumstances, in the interest of justice.”



8. On the application filed by defendants, *ad volarem* Court Fee stands paid. Order passed by the Trial Court, dated 05.10.2021 to the said effect reads as under:

“Present : Sh. Abhivan Oberoi Advocate for plaintiff
Sh.AS Longia Advocate for defendant

An application is filed for placing on record receipt regarding deposit of court fee of Rs.3,34,090/-. In view of the contents of the application, the same is allowed and receipt is taken on record. The perusal of the file shows that defendant has filed an application U/o 7 R 11 CPC for rejection of plaint on the ground that plaintiff is liable to pay court fee of Rs.3,33,997/-. Once the plaintiff has now deposit the court fee of Rs.3,34,090/-, therefore, said application stands disposed of being infructuous. Now to come up on 19.10.2021 for filing written statement and reply by the defendant.

Dated: 05.10.2021
xxxx

Sd/-
CJJD-SAS Nagar
UID No.PB0422”

9. Once the plaintiff/petitioner had paid *ad valorem* Court Fee, nomenclature of mandatory injunction is a misnomer.

10. Application under Order VI Rule 17 CPC was filed whereby a formal prayer was made for amendment in the prayer clause, to the following effect:

“xxx

xxx

xxx

(H) The in the prayer clause



The words “Mandatory Injunction” appearing after the words “further decree for suit for” and before the word “may kindly” is required to be substituted with words “for possession as owner by way of specific performance of agreement to sell after declaration that alleged cancellation of the agreement and forfeiture of earnest money by Plaintiff is illegal, null and void being unilateral and does not affect the rights of plaintiff in any manner to enforce the contract/agreement of sale deed dated 17-1-2021.

Before the relief of Permanent injunction, the following is to be added:

And in the alternative, suit for Recovery of Rs. 10 lakh with interest @ 12% per annum from the date of respective payments received by defendant with future interest till realisation may kindly be granted to the Plaintiff.

xxx

xxx

xxx”

11. After the application was filed with the aforesaid prayer, the Trial Court should have been alive to the fact that the *ad valorem* Court Fee already having been made good, the proposed amendment in the prayer clause seeking substitution of ‘mandatory injunction’ with ‘specific performance’ was merely a formality. It being an act of euphemism needs to be corrected. Intention being to enforce agreement to sell, suit is essentially the one for specific performance after court fee was paid.

12. That being so, alternate prayer for recovery of money would be fully covered by Section 22 of the 1963 Act, which reads as under:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to



the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

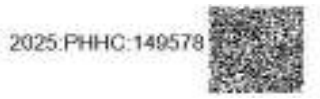
(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1 [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

13. The import of Section 22 of the 1963 Act has been interpreted repeatedly by the Supreme Court to hold that the alternate prayer contemplated under the proviso appended to Section 22(2) clothes the Court with power to allow the amendment at any stage of the proceedings, including the appellate stage. The mandate of Section 22 having an overriding effect over the provisions contained under Civil Procedure Code, 1908. Thus provision contained under Order VI Rule 17 cannot be read to hold Court from allowing such amendment pleading delay. The ratio of law relied upon by Mr. Chatrath as laid in *Basavaraj's* case and *M. Revanna's*



case (supra), is not applicable to the present case as the same deals with Order VI Rule 17 CPC and not with Section 22 of the 1963 Act.

14. In view of above, this Court finds that the impugned order dated 12.08.2024 passed by the Trial Court, cannot be sustained. The same is hereby set aside.

15. Application filed by the petitioner/plaintiff under Order VI Rule 17 CPC seeking amendment of the plaint, is allowed.

16. Pending application, if any, shall also stands disposed off.

October 30, 2025					(Pankaj Jain)
Dpr					Judge
	Whether speaking/reasoned	:		Yes/No	
	Whether reportable	:		Yes/No	