



109

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

CR-1690-2021 (O&M)

Date of Decision : 06.02.2026

Nanku Singh

... Petitioner(s)

Versus

Vikram Singh & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Vivek Goyal, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed by the defendant-petitioner under Article 227 of the Constitution of India challenging the impugned order dated 27.07.2021 whereby an application filed by the plaintiff-respondent No.1 for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908, at the stage of arguments, has been allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit on 10.12.2014 for possession by way of specific performance of the agreement to sell dated 13.02.2014. In the written statement it was clearly stated that the suit was not maintainable in the present form and further it was elaborated that the agreement to sell dated 13.02.2014 was cancelled on 16.10.2014. The issues were framed on 12.05.2015 and one of the issues framed was qua the maintainability of the suit. On 21.01.2020 arguments were heard in the matter and it was reserved and shown for orders

on 22.01.2020. However, the Presiding Officer was transferred and thereafter the arguments were again heard in the matter by the Successor Presiding Officer on 09.03.2020. The case was reserved and was shown for orders on 18.03.2020. However, due to the situation created because of Pandemic Covid-19, work was suspended and the order could not be pronounced on 18.03.2020. Thereafter, the present application for amendment of the plaint was filed on 16.02.2021 wherein a plea was raised for challenging the cancellation dated 16.10.2014 in view of the judgment of the Hon'ble Supreme Court in the case of **I.S. Sikandar (D) by LRs Vs. K. Subramani & Ors. [2014 (1) RCR (Civil) 236]**. Reply was filed to the said application and vide the impugned order dated 27.07.2021 the amendment application was allowed. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that at the stage of arguments, the present application has been filed for amendment introducing a time-barred claim. Learned counsel would further contend that though it was noticed by the Trial Court that the amendment application was filed at a belated stage and the judgment in **I.S. Sikandar's** case (supra) had already been pronounced in the year 2014, yet allowed the application and in order to compensate the delay, the plaintiff-respondent No.1 was directed to deposit costs of ₹500/- at DLSA, Kurukshetra. It is further the contention of the learned counsel that by way of the amendment, a totally time-barred claim is being introduced as the limitation period for challenging the cancellation is three years as per Article 54 of the Limitation Act, 1963. Learned counsel relying on the judgment in **I.S. Sikandar's** case (supra) would contend that since the agreement stood cancelled, the suit for specific performance was not maintainable without seeking a declaration that

the termination of the agreement was bad in law. It is further the contention that the said judgment in **I.S. Sikandar's** case (supra) is dated 29.08.2013 i.e. much prior to the filing of the present suit. Learned counsel has further contended that his entire defense had been disclosed as the arguments were heard on two occasions and on both the occasions the argument qua the termination of agreement not having been challenged was raised.

4. *Per contra*, learned counsel for the plaintiff-respondent No.1 has contended that the suit cannot be dismissed only on the basis of hyper-technical objections.

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

6. In the present case the judgment in **I.S. Sikandar's** case (supra) was pronounced on 29.08.2013 and their Lordships in para Nos.16 and 17 have specifically held as under :

“16. After perusal of the impugned judgment of the High Court and the questions of law framed by the defendant No.5 in this appeal, the following points would arise for determination of this Court :

(1) Whether the original suit filed by the plaintiff seeking a decree for specific performance against the defendant Nos.1-4 in respect of the suit schedule property without seeking the declaratory relief with respect to termination of the Agreement of Sale vide notice dated 28.3.1985, rescinding the contract, is maintainable in law?

(2) Whether the reversal of the findings of the trial court on the issue Nos.3, 4 and 5 by the High Court and answering the same in favour of the plaintiff in the impugned judgment and granting the decree for specific performance in favour of the plaintiff in respect of the schedule property is legal and valid?

(3) Whether the grant of decree of specific performance in favour of the plaintiff despite Clause 12 of the Agreement of Sale dated 25.12.1983 is legal and valid?

(4) Whether the grant of the decree is in conformity with sub-sections (1) and (2) of Section 20 of the Specific Relief Act and whether the learned Judge of the High Court has exercised his discretionary power reasonably in granting the same in favour of the plaintiff?

(5) What decree or order to be passed?

17. Answer to Point No.1

The first point is answered in favour of the defendant No.5 by assigning the following reasons :

It is an undisputed fact that there is an Agreement of Sale executed by defendant Nos.1-4 dated 25.12.1983 in favour of the plaintiff agreeing to sell the schedule property in his favour for a sum of ₹45,000/- by receiving an advance sale consideration of ₹5,000/- and the plaintiff had further agreed that the remaining sale consideration will be paid to them at the time of execution of the sale deed. As per Clause 6 of the Agreement of Sale, the time to get the sale deed executed was specified as 5 months in favour of the plaintiff by the defendant Nos.1-4, after obtaining necessary permission from the competent authorities such as the Urban Land Ceiling Authority and Income Tax Department for execution and registration of the sale deed at the cost and expenses of the plaintiff. If there is any delay in obtaining necessary permission from the above authorities and the payment of layout charges, the time for due performance of agreement

shall further be extended for a period of two months from the date of grant of such permission. In the instant case, permission from the above authorities was not obtained from defendant Nos.1-4. The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired. Despite the same, the defendant Nos.1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of defendant Nos.1-4, in which he had admitted his default in performing his part of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour. Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos.1-4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos.1-4 w.e.f.

10.04.1985. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law. Accordingly, the point No. 1 is answered in favour of the defendant No.5.”

7. The present suit was filed on 10.12.2014 i.e. after the judgment in **I.S. Sikandar’s** case (supra). The issues were framed on 12.05.2015 and one of the issues specifically framed was qua the maintainability of the suit. On two occasions i.e. 21.01.2020 and 09.03.2020, arguments were addressed and orders could not be pronounced on both occasions as noticed above. It is only on 16.02.2021 that the amendment application was filed challenging the termination of the agreement to sell. The Trial Court while allowing the application held that the fact of cancellation was pleaded and the amendment sought was only qua the prayer clause and, therefore, holding that it would not change the nature and cause of action allowed the amendment. Hon’ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** has held as under :

“70. xxxxxxxxxxxxxxxx

(ii) *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*

(iii) *The prayer for amendment is to be allowed*

(i) *if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

(ii) *to avoid multiplicity of proceedings, provided*

(a) *the amendment does not result in injustice to the other side,*

(b) *by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

(c) *the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

(iv) *A prayer for amendment is generally required to be allowed unless*

(i) *by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

(ii) *the amendment changes the nature of the suit,*

(iii) *the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.”*

8. What needs to be seen in the present case is whether a time-barred claim is being introduced and whether the defendants would lose

a valid defense. The agreement to sell is dated 13.02.2014 and the cancellation is dated 16.10.2014. The amendment to the plaint has been sought on 16.02.2021, thus, introducing a totally time-barred claim. Permitting the plaintiff-respondent No.1 to introduce the said prayer at this stage would result in divesting the defendant-petitioner of a valuable right which accrued in his favour. That apart, the defendant-petitioner stands to lose a valid defense by introduction of this time-barred claim. It is not a case where the plaintiff-respondent No.1 was not aware of the termination. Infact, it is stated in his own plaint that the agreement stood terminated. The judgment of the Hon'ble Supreme Court in **I.S. Sikandar's** case (supra) came prior to the filing of the suit. Hence, it is not a case where it can be said that the parties were not aware of the law as laid down by the Hon'ble Supreme Court at the time of filing of the suit.

9. In view of the above, the impugned order dated 27.07.2021 passed by the Trial Court cannot be sustained in law and the same is accordingly set aside. The amendment application filed by the plaintiff-respondent No.1 is dismissed. The present revision petition stands allowed. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

06.02.2026
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

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