
(2007) 08 P&H CK 0177
In the Punjab And Haryana At Chandigarh

Mohinder Partap Vij and Others	Vs	APPELLANT
Rajiv Anand and Others		RESPONDENT

Date of Decision : 28-08-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 4 PLR 761

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—This revision is directed against the order dated 31.5.2007 passed by the Civil Judge (Senior Division), Karnal allowing the application of the plaintiff/respondent for amendment of the plaint.

2. It is admitted case of the parties that an agreement to sell was executed with respect to the suit property and earnest money was advanced. The period for specific performance was also extended by mutual consent upto 15.5.2005. However, before the expiry of period for specific performance, plaintiff filed a suit for mandatory injunction seeking a direction against the Haryana Urban Development Authority, to grant permission to the defendants to enable them to effect the sale as the plot agreed to be sold was allotted by the Haryana Urban Development Authority. It is also admitted that during the pendency of the suit, period for specific performance has expired. The plaintiff/respondent filed an application for amendment of the suit with a prayer that the suit may be allowed to be converted from mandatory injunction to one for specific performance which has been allowed vide impugned order.

3. Learned Counsel appearing for the petitioners/defendants submits that in view of the proviso to Order VI Rule 17 of the C.P.C., the trial court should not have allowed the application of the respondent/plaintiff unless the Court comes to the conclusion that in spite of due diligence the plaintiff could not make application

before the commencement of the trial. Though no specific reference is made to this in the impugned order, but from the perusal of the same, it appears that the Court has considered the fact that during the pendency of the suit, the period for specific performance has expired and consequently allowed the plaintiff/applicant to amend the plaint. The impugned order passed by the trial court is discretionary in nature. The trial court exercised its judicial discretion. Such an order is not required to be interfered in exercise of the powers under Article 227 of the Constitution of India.

4. A part from above, there is another reason that the suit is at the initial stage and the plaintiff and the defendants are yet to lead their evidence. No prejudice is likely to be caused to the petitioners/defendants. No interference is warranted against the impugned order.

5. In view of the above, I find no merit in this Revision which is accordingly dismissed.