

PUNJAB AND HARYANA HIGH COURT

Present: Justice Archana Puri.

RADHA RAMAN SHARMA – Petitioner

Versus

RAJ KUMAR – Respondent

CR-3522 of 2022 (O&M)

(i) Specific Relief Act, 1963 (47 of 1963), S. 22(1) – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17 – Interplay between – Non-obstante clause – S. 22(1) of Specific Relief Act gives overriding effect to said Section by incorporating non-obstante clause as against provisions contained in Code – S. 22 is also a law dealing with pleadings as is the case with O. 6 R. 17 CPC – Specific Relief Act being special statute dealing with pleadings in regard to specific type of cases has to prevail over provisions contained in CPC which are general in nature. (*Lalchand Sheetalsing Pardeshi v. Ramkrishna Kashinath Jadhav*, 2004 (2) Bom CR 757, relied upon) [Paras 16-18]

(ii) Specific Relief Act, 1963 (47 of 1963), S. 22(1)(a)(b) – Power to grant relief for possession, partition, refund of earnest money – Scope – Any person suing for specific performance of contract for transfer of immovable property may ask for possession or partition and separate possession in addition to such performance – May also ask for any other relief to which he may be entitled including refund of earnest money or deposit paid by him in case his claim for specific performance is refused.

“The aforesaid section provides that plaintiff may claim decree for possession, partition and separate possession, in addition to specific performance and further provides that the plaintiff be allowed to claim such relief, ‘at any stage of the proceedings’.” [Para 17]

(iii) Specific Relief Act, 1963 (47 of 1963), S. 22(1) – Words “in an appropriate case” – Interpretation – Words indicate that it is not obligatory for plaintiff to seek relief of possession, partition or refund of earnest money in every case – Relief envisaged by clauses (a) and (b) of Sub-section (1) can be sought and granted where it is conducive to grant such relief.

“The words, ‘in an appropriate case’ indicate that it is not obligatory for the plaintiff to seek such relief in every case. The relief envisaged by clauses (a) and (b) of Sub-section (1) can be sought and granted, where it is conducive to grant such a relief.” [Para 17]

(iv) Specific Relief Act, 1963 (47 of 1963), S. 22(2), Proviso – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17 – Amendment of plaint – Words “at any stage of the proceeding” – Interpretation – Words emphasize that stage of proceeding does not matter – If case is made out for seeking reliefs under S. 22(1)(a) and (b), stage of proceedings would not be a hindrance – Tone and tenor of provision spells out that equitable relief of specific performance ought to be complete and effective to encompass in its fold all that which a party had agreed to perform.

“The words, ‘at any stage of the proceeding’, do emphasize that the stage of the proceeding does not matter and if case is made out for seeking those reliefs, the stage of proceedings would not be a hindrance.” [Para 17]

(v) Specific Relief Act, 1963 (47 of 1963), S. 22(2), Proviso – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17 – Amendment of plaint – Use of word “shall” – Court’s obligation – Where plaintiff has not claimed relief in plaint, Court shall at any stage of proceeding allow him to amend plaint on such terms as may be just for including claim for such relief – Word “shall” used in proviso is mandatory – Right of plaintiff casts obligation on Court to allow said amendment – Court has no option and/or choice but to allow said amendment. *Lalchand Sheetalsing Pardeshi v. Ramkrishna Kashinath Jadhav*, 2004 (2) Bom CR 757, relied upon. [Paras 18, 21]

(vi) Specific Relief Act, 1963 (47 of 1963), S. 22(2), Proviso – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17 – Amendment of plaint at appellate stage – Seeking refund of earnest money as alternative relief – Limitation – Whether bar – General rule that party is not allowed by amendment to set up new case or new cause of action particularly when suit on new cause of action is barred – However, where amendment does not constitute addition of new cause of action or raise different case but amounts merely to different or additional approach to same facts, amendment would be allowed even after expiry of statutory period of limitation – *Held*, Where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts, the amendment would be allowed, even after expiry of the statutory period of limitation.” [Para 19]

(vii) Specific Relief Act, 1963 (47 of 1963), S. 22(2), Proviso – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17 – Amendment of plaint – Refund of earnest money as alternative relief – Whether new cause of action – Relief of refund of earnest money being sought to be introduced in plaint only as alternative relief to relief of specific performance for which suit had been filed – Does not amount to introduction of new cause of action – Normally plaintiff in suit for specific performance would be entitled to refund of earnest money if relief for specific performance is refused since this is just and equitable – Amendment with regard to inclusion of relief for refund of earnest money cannot be refused solely on ground that said relief was barred by limitation on day when amendment was sought – *Held*, this is an alternative relief sought and therefore, it does not amount to introduction of new cause of action and precisely, on this account, learned Appellate Court, had correctly allowed the application for amendment. (*Manohar s/o Dhundiraj Joshi v. Jhunnulal s/o Hariram Yadao*, 1983 (85) BomLR 87, relied upon) [Paras 20, 22]

(viii) Specific Relief Act, 1963 (47 of 1963), S. 22 – Civil Procedure Code, 1908 (V of 1908), O. 6 R. 17, Proviso – Amendment of plaint after commencement of trial – Interplay – Proviso to R. 17 O. 6 CPC makes provision for not allowing application for amendment after trial has commenced unless Court concludes that in spite of due diligence party could not have raised matter before commencement of trial – Said provision cannot be considered in isolation – Rule of pleading envisaged in statute governing particular jurisdiction needs to be accorded due weight – S. 22 of Specific Relief Act enacts such rule of pleading. [Para 16]

Cases Referred to:

1. AIR 1967 SC 96, *A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation* – Amendment not constituting new cause of action but different approach to same facts allowable even after expiry of limitation. [Paras 19, 20]
2. 2004 (2) Bom CR 757, *Lalchand Sheetalsing Pardeshi v. Ramkrishna Kashinath Jadhav* – S. 22 of Specific Relief Act has overriding effect over O. 6 R. 17 CPC; word “shall” in proviso is mandatory. [Para 18]
3. 1983 (85) BomLR 87, *Manohar s/o Dhundiraj Joshi v. Jhunnulal s/o Hariram Yadao* – Relief of refund of earnest money as alternative relief cannot be refused solely on ground of limitation. [Para 20]

Mr. Shiv Kumar, Advocate for the petitioner. Mr. Kunal Dawar and Ms. Tanika Goyal, Advocates for the respondent.

Justice Archana Puri – (18-09-2024) – Challenge in the present revision petition is to the order dated 19.07.2022 (Annexure P-7) passed by learned District Judge, whereby, an application filed by the respondent-plaintiff under Order 6, Rule 17 CPC, for amendment of the plaint, at the stage of first appeal, was allowed.

2. The facts germane, to be noticed, are as follows:-

That, Civil Suit bearing No.133 of 2018 was filed by the respondent (plaintiff before learned trial Court), for seeking possession by way of specific performance of the contract/agreement to sell dated 27.06.2017, with consequential relief of permanent injunction.

3. As per the version of the respondent-plaintiff, the petitioner defendant, had entered into a registered agreement to sell dated 27.06.2018, with regard to the sale of suit property, for total consideration of Rs. 19,30,000/-. Out of the said amount, respondent-plaintiff had paid an amount of Rs. 6,00,000/- on 20.03.2015, Rs. 8,00,000/- on 17.06.2016, Rs. 2,30,000/- on 14.03.2017 in cash and Rs. 2,00,000/- was paid through cheque No.000035 dated 27.06.2017, to the defendant.

4. The stipulated date for execution of the sale deed was fixed as 22.05.2018. On the said date, the respondent-plaintiff had visited the office of Sub Registrar, Ballabgarh, for registration of the sale deed, in his favour, but however, the petitioner-defendant did not make appearance. Thereafter, from time to time, the respondent-plaintiff had requested the defendant to execute the sale deed, in his favour, but the defendant had only given false assurances to the plaintiff. The intention of the defendant was bad not to execute sale deed. Ultimately, two legal notices dated 29.05.2018 and 17.07.2018 were issued by the respondent-plaintiff, but the defendant failed to execute the sale deed, in favour of the plaintiff, whereupon, suit for seeking decree of possession, on the basis of the agreement in question, as well as consequential relief of permanent injunction was filed.

5. In pursuance of the notice issued, the petitioner-defendant made appearance and had filed written statement, copy whereof is Annexure P-2.

6. Considering the contentions raised by the respondent-plaintiff aforesaid and also considering the pleas of the petitioner-defendant, as projected in the written statement,

while observing various aspects of the factual position, as enumerated in the judgment, learned trial Court, was not inclined to give relief of specific performance.

7. Besides the same, qua the refund of earnest money, which allegedly was received by the petitioner-defendant, learned trial Court made an observation, while not granting refund of earnest money, which in verbatim, is reproduced, as herein given:-

“27. So, plaintiff might have been entitled for refund of said money under section 22 of Specific Relief Act, 1963 but clause (2) of section 22 of Specific Relief Act, 1963 specifically put a bar upon this court from granting relief of refund of earnest money unless it has been specifically claimed. Plaintiff never made any such prayer for refund of earnest money. So this court cannot grant him any relief in that regard in view of bar created by clause (2) to Section 22 Specific Relief Act, 1963.

28. Thus, issue no. 1 is partly decided in favour of plaintiff to the fact that defendant received 18.30 lakh from plaintiff but partly said issue is decided ? in favour of defendant to the effect that agreement Ex. P1 was not executed with intention to sale out the property but it was a mere security for repayment of loan. Issues no. 2, 3 and 4 are also decided against the plaintiff as discussed herein above.”

8. Ultimately, the suit was dismissed vide judgment dated 19.07.2019.

9. Being aggrieved by the judgment of dismissal of the suit, the respondent-plaintiff had filed the appeal. During the pendency of the appeal, amendment was sought by the respondent-plaintiff, to plead alternative relief of refund of earnest money. Reply to the said application was filed by the petitioner-defendant. After hearing the counsel for the parties, the application for amendment was allowed vide impugned order dated 19.07.2022.

10. Being aggrieved, the petitioner-defendant has filed the revision petition in hand.

11. Learned counsel for the parties heard.

12. At the very outset, learned counsel for the petitioner-defendant submitted that relief of refund of earnest money was available with the respondent-plaintiff, on the date of institution of the suit, but no such relief was claimed. It was only during the pendency of the appeal, the application for amendment was filed, seeking alternative relief of refund of earnest money. Since, the relief for refund of earnest money had become barred by limitation by that time, therefore, it could not have been allowed by learned lower Appellate Court. By virtue of limitation having expired, right accrued to the petitioner-defendant and therefore, such claim, ought to have been denied to be inserted by way of amendment, at appellate stage.

13. On the other hand, learned counsel for the respondent-plaintiff had assiduously refuted the claim of the petitioner-defendant. He submits that provision of Order [6](#), Rule [17](#) CPC, does not govern the amendment sought, in view of the specific provision of section [22](#) of the Specific Relief Act, which makes provision for amendment of the plaint to claim relief of possession, partition, refund of earnest money etc. Also, it is pointed out that proviso to Section 22(2) provides 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.

14. In the light of the aforesaid provision, learned counsel for the respondent-plaintiff also submitted that in fact, the proposed amendment did not relate to setting up of new case or new cause of action. In fact, it relates only to different or additional approach to the same facts, which would be allowed, even after the expiry of statutory period of

limitation.

15. As such, it is submitted that learned lower Appellate Court has correctly allowed the application for amendment, which warrants no further interference by this Court.

16. Undoubtedly, the proviso to Rule 17 Order 6 CPC, makes a provision for not allowing the application for amendment, after trial has commenced, unless the Court, comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. But however, the said provision cannot be considered in isolation. The rule of pleading envisaged in a statute governing a particular jurisdiction, needs to be accorded due weight section 22 of the Specific Relief Act, 1963 enacts such a rule of pleading. Section 22 of the *ibid* Act, reads as under:

“S.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 [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.”

17. Evidently, the aforesaid section provides that plaintiff may claim decree for possession, partition and separate possession, in addition to specific performance and further provides that the plaintiff be allowed to claim such relief, ‘at any stage of the proceedings’. It is imperative to note that Sub-section (1) of Section 22, gives an overriding effect to the said Section, by incorporating a non-obstante clause, as against the provisions contained in the Code. Moreover, the words, ‘in an appropriate case’ and ‘at any stage of the proceeding’ are of material significance and further expand the scope and ambit of the provisions contained in Section 22. The words, ‘in an appropriate case’ indicate that it is not obligatory for the plaintiff to seek such relief in every case. The relief envisaged by clauses (a) and (b) of Sub-section (1) can be sought and granted, where it is conducive to grant such a relief. However, the words, ‘at any stage of the proceeding’, do emphasize that the stage of the proceeding does not matter and if case is made out for seeking those reliefs, the stage of proceedings would not be a hindrance. The tone and tenor of this provision spells out that equitable relief of specific performance, ought to be complete and effective, to encompass in its fold, all that which a party had agreed to perform.

18. In this regard, beneficial reference is made to *Lalchand Sheetalsing Pardeshi died through heirs and LRs v. Ramkrishna Kashinath Jadhav & others*, 2004 (2) Bom. C.R. 757, wherein, the Hon’ble Court, while considering the provisions contained in section 22 of the Specific Relief Act as well as Order 6, Rule 17 CPC, had made an observation,

as herein given:-

"8.Section 22(1) has an overriding effect over the provisions contained in Civil Procedure Code. Section 22 is also a law dealing with pleadings, as is the case in relation to Order VI, Rule 17 of Civil Procedure Code. Section 22 deals with pleadings in regard to specific type of cases and, as such, the said statute viz. Specific Relief Act is a special statute, in contradistinction to the provisions in the Code of Civil Procedure which are general in nature. Provision in a special statute which has been given an overriding effect by introducing a non-obstante clause has to prevail over the provisions contained in the Code of Civil Procedure and, in this view of the matter, the submission canvassed on behalf of the petitioners, that Section 22 overrides the provisions contained in the proviso to Rule 17 of Order VI of Civil Procedure Code, has to be accepted.

9. Once it is held that section 22 of the Specific Relief Act has an overriding effect over the provisions contained in Order VI, Rule 17, then it is amply clear that the plaintiff has a right to seek amendment claiming possession, in a suit for specific performance of contract, for the transfer of immovable property and the Court has no option and/or choice but to allow the said amendment. The proviso to Sub-section (1) of section 22 of the Specific Relief Act enables the plaintiff who has not claimed the relief of possession in the plaint, to seek an amendment and claim the same at any stage of the proceedings and the said right of the plaintiff cast an obligation on the Court to allow the said amendment. The relevant words used in the proviso "the Court shall", clinches the issue. The word "shall" used in the proviso is mandatory."

19. It is not disputed that on the date, when the application for amendment of the plaint was made, during the pendency of the appeal, the claim for refund of earnest money, would have been barred by limitation. Also, it is settled position that amendment of plaint, when introducing a new claim, which would be barred by limitation, cannot be allowed. However, in this context, considering the proposed amendment of the case in hand, profitable reference is made to *A.K.Gupta & Sons Ltd. v. Damodar Valley Corporation*, AIR 1967 SC 96, wherein, the Hon'ble Supreme Court has laid down as a general rule, that a party is not allowed by amendment to set up a new case or new cause of action, particularly, when the suit on the new cause of action is barred. However, at the same time, the Hon'ble Supreme Court had further held that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts, the amendment would be allowed, even after expiry of the statutory period of limitation.

20. While relying upon *Gupta's case* (supra), in a decision rendered in *Manohar s/o Dhundiraj Joshi v. Jhunnulal s/o Hariram Yadao*, 1983 (85) BomLR 87, it was held that even though, qua the entitlement of the plaintiff for amendment, considering at least for the relief of compensation, could not be allowed, but however, the same could not be said with regard to the refund of earnest money, as this relief was being sought to be introduced in the plaint, only as an alternative relief, to the relief for specific performance for which the suit had been filed. It was also observed therein, that normally the plaintiff, in a suit for specific performance, would be entitled to refund of earnest money, if the relief for specific performance is refused, since this is just and equitable. Thus, applying the principles of *Gupta's case* (supra), it was held that it would not be possible to say that the amendment, with regard to the inclusion of relief for refund of earnest money, could have been refused, solely on the ground that the

said relief was barred by limitation, on the day when the amendment was sought. Precisely, on this account, the order of denial of amendment, as passed by the Court below, was set aside.

21. Considering the provisions of Section 22 of the *ibid* Act, to be a rule of pleading, by virtue of proviso to sub-section (2), the Court, ought to permit the plaintiff, at any stage of proceedings, to include one or more of the reliefs, mentioned in clause (a) and (b) of sub-section (1) of Section 22 of the *ibid* Act, by means of amendment of the plaint, on such terms, as it may deem proper.

22. In this backdrop, adverting to the case in hand, it is pertinent to mention that the suit was filed for seeking possession, by way of specific performance of the agreement to sell dated 27.06.2017, with consequential relief of permanent injunction. On the basis of the pleadings, with regard to the manner of having entered into an agreement to sell dated 27.06.2017 and the payment of the earnest money and the stipulated date fixed for the execution of the sale deed, which was not complied with, along with the suit for specific performance of contract, the respondent-plaintiff had pleaded in the proposed amendment for inclusion of alternative relief of refund of earnest/advance money of Rs. 18,30,000/-, together with the interest. This is an alternative relief sought and therefore, it does not amount to introduction of new cause of action and precisely, on this account, learned Appellate Court, had correctly allowed the application for amendment.

23. As such, the impugned order, warrants no interference by this Court, in exercise of the revisional powers. Hence, the revision petition sans merit and the same is hereby dismissed.