

MOHIT BHARGAVA Vs. ASHOK KUMAR GUPTA

14.07.2025

Present : None for the plaintiff.

Sh. Subham Tyagi, Ld. Proxy Counsel for the defendant.

**Order on the application filed by the plaintiff under Order VI
Rule 17 read with Section 151 CPC for amendment of the plaint, dated
13.01.2025:**

1. The contents of the application are reproduced hereunder:
 - "1. That the plaintiff has filed the above noted suit against the defendant for specific performance in respect of Agreement to Sell, which is pending before this Hon'ble Court.
 2. That in advertently, due to oversight and bonafide mistake, the earlier counsel of the plaintiff could not make the alternative relief of recovery of money in the prayer clause, though he has stated so in para 19 of the plaint.
 3. That thus, the plaintiff wants to amend the title of the plaint which be amended and be read as under:-
"SUIT FOR SPECIFIC PERFORMANCE AND IN THE ALTERNATIVE RECOVERY OF MONEY"
 4. That in view of the above, the plaintiff also wants to amend (i) of the prayer clause, which be read and be amended as under:-
(i) Pass a decree for Specific Performance thereby the Defendants be directed to execute the Sale Deed of property bearing No.D-88, measuring 50 Sq. Yrds. Laxmi Nagar, Delhi-110092 in favour of the plaintiff in the facts and circumstances as averred in the foregoing para of the plaint and in the interest of justice may kind be pass an alternative relief in favour of plaintiff against the defendant a decree for recovery/return back the sale consideration of Rs.21,05,000/ with interest @24% pa. from the date of institution of the suit till its realisation.
 5. The plaintiff wants to add the new Para 19A which is totally based upon the mixed question of law and facts which are as -
19A. That the plaintiff having good prima facie case and balance

of convenience in his favour and he has paid more than 21 lacs to the defendants and still he is ready and willing to remaining amount as per direction of this court.

6. That the above amendments are very material for deciding the real controversy between the parties and the case still in its initial stages and no prejudice will be caused to the defendants. This amendment is also necessitated due to the false defence taken by the defendant No.2 in his written statement.

It is, therefore, prayed that this Hon'ble Court be pleased to allow the above mentioned amendments to the plaintiff in his plaint to meet the ends of justice.

Any other relief granted by this Hon'ble Court deems fit and proper be also granted to the plaintiff."

2. A reply has been filed on behalf of the defendants.

The preliminary objections raised therein are reproduced below:

"1. That the present application is not maintainable and is liable to be dismissed as it is bad in law as well as in fact.

2. That the present application is not maintainable and is liable to be dismissed as if the application is allowed it will cause irreparable loss and injury to the Defendant, the balance of convenience lies in the favor of the Defendant. The Defendant has a good prime of a case in her favor.

3. That the present application is not maintainable and is liable to be dismissed as there is no change in circumstances.

4. That the present application is not maintainable and is liable to be dismissed as it does not qualify the ingredients of Order VI Rule 17 CPC.

5. That the present application is not maintainable and is liable to be dismissed as the only averment made in the application is with regard to change of counsel due to which the relief could not be asked for.

6. That the present application deserves to be dismissed as no sufficient ground or cause has been mentioned for amendment of the plaint.

7. That the present application deserves to be dismissed as the blame has been put to the previous counsel without substantiating any proof or any action taken with regard to the same against the previous counsel.

8. That there is no valid justification for filing the application at such a late stage, especially considering that the newly engaged counsel had already appeared on multiple hearing dates without raising any of the arguments presented in the current application.
9. That the present application is not maintainable and is liable to be dismissed as a relief claim is also hit by the law of limitation and the prayer of recovery cannot of sought at this belated stage.
10. That the present application is not maintainable as the plaintiff has already filed an application for amendment of plaint and without seeking withdrawal of the same has preferred the present amendment application. That the present amendment application has been moved to curtail the objections which were raised by the defendants at the time of the arguments on the application moved by the plaintiff under order 6 rule 17 CPC 1908. That the suit per se of the plaintiff is not maintainable. ”

3. In their reply on merits, the defendants have denied the truthfulness of the contents of the application in toto. In support of their submissions, the defendants have relied upon the following judgments:

1. *Shri Firoz Uddin and Others vs. Shri Anwar Uddin* – Hon’ble Allahabad High Court.
2. *Mahendra Pratap Singh vs. Rama Raman*, SCC Revision No. 38 of 2024 – Hon’ble Delhi High Court.
3. *Hari Shanker and Others vs. Bhawati Prasad Mishra*, reported in 2014 (0) Supreme (All) 3127 – Hon’ble Allahabad High Court.
4. *Basavraj vs. Indira and Others*, (2024) 3 SCC 705.
5. *M/s Modi Spinning & Weaving Mills Co. Ltd. and Another vs. Ladha Ram & Co.*
6. *M/s Revajeetu Builders & Developers vs. M/s Narayanaswamy & Sons & Others.*

4. Learned counsel for the plaintiff argued in line with the contents of

the application and submitted that the case is still at a nascent stage. He contended that the proposed amendment would not cause any prejudice to the defendants.

On the other hand, learned counsel for the defendants reiterated the submissions made in the reply and primarily emphasized the issue of limitation. In addition to the judgments already cited, he relied on the following precedents:

1. *Asian Hotels (North) Ltd. vs. Alok Kumar Lodha & Others*, Civil Appeal Nos. 3703–3750 of 2022 – Hon’ble Supreme Court of India.
2. *Basavaraj vs. Indira & Others*, Civil Appeal No. 2886 of 2012 – Hon’ble Supreme Court of India.

5. I have heard the learned counsel for both parties, carefully perused the case record, and considered the legal position as laid down in the relevant precedents and judicial pronouncements.

6. Through the present application, the plaintiff seeks to amend the plaint by incorporating an alternative relief for recovery of money, along with necessary averments regarding readiness and willingness to perform his part of the contract.

With regard to the addition of the alternative relief, the observations of the Hon’ble Supreme Court in ***K.R. Suresh vs. R. Poornima & Others*, 2025 INSC 617**, are relevant and are reproduced as under:

“54. Before we proceed to answer the question formulated by us in para 27, we deem it necessary to examine Section 22 of the 1963 Act. It reads thus:

“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: Provident 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 subsection (1) shall be without prejudice to its powers to award compensation under section 21.”

55. Sir Frederick Pollock, 3rd Baronet, in Pollock & Mulla: The Indian Contract and Specific Relief Acts, 16th Edn., has discussed the object and scope of Section 22 of the 1963 Act and the alternative relief of refund of earnest money deposit, as follows:

“[s 22.6.2] Refund of Earnest Money or Deposit

[...] The relief of refunding of earnest money or deposit cannot be granted unless specifically claimed. Further such a plea cannot be considered in a second appeal, particularly when the issue of execution of the agreement has been held as not having been proved.

Refund of amounts paid may also be ordered when specific performance has been refused on the ground of unexplained delay by the plaintiff in approaching the Court. It is also open to a plaintiff to give up his prayer for specific performance at the hearing, or before the hearing, and ask for return of the earnest money or deposit.

Where a clause entitling forfeiture of earnest money is contained in the agreement, it would not be refundable to the plaintiff who has failed to perform his part of the contract. Forfeiture of earnest money should not be allowed where the vendor has not suffered any loss, but has actually gained, viz., on account of frustration of contract. Where the value of land had considerably increased after the sale agreement, the Court, while refusing a decree for specific performance, ordered a refund of the earnest amount on the ground that the plaintiff did not suffer any loss, but had gained due to the default of the plaintiff.

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[s 22.7] Pleadings and Amendment to Pleadings

Section 22 enacts a rule of pleading. It enables the plaintiff to ask for possession in the suit for specific performance and empowers the Court to provide, in the decree itself, that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession. If the said relief is not claimed in the

plaint, the Court shall permit the plaintiff at any stage of the proceedings, including execution proceedings, to amend the plaint on such terms as it deems proper. The purpose is to avoid multiplicity of suits. This provision overrides the provisions of Order VI, rule 17 of CPC, 1908. Omission to seek alternative relief is not a ground to reject the plaint.

A plaintiff may amend the plaint to include a claim for refund to advance money paid to the defendant. The amendment may be made at any stage of the proceeding, including the appellate stage. The option vests with the plaintiff to claim alternative relief, and unless he claims such a relief, the Court is not empowered to grant it.”

(Emphasis supplied)

56. The expression “at any stage of the proceeding” has been judicially interpreted to include the appellate stage as well, as affirmed by a catena of High Court decisions. This interpretation entails that that an amendment of the plaint to incorporate a prayer for the alternative relief of refund of earnest money may be sought even during the first appeal from the original decree passed in a suit for specific performance. The non-obstante clause attached to Section 22(1) of the 1963 Act grants it an overriding effect, thereby excluding the operation of the Code of Civil Procedure, 1908. Further, the use of the word “shall” in the proviso to Section 22(2) imposes a mandate upon the court to allow the amendment of plaint, as sought by the party, at any stage. [See: ***Sahida Bibi v. Sk. Golam Muhammad*, 1982 SCC OnLine Cal 59; *Tarit Bhowmik v Mukul Day*, 2014 SCC Cal 5361]**

57. In ***Manickam v. Vasantha***, reported in **2022 SCC OnLine SC 2096**, this Court was dealing with the question of whether the executing court could deliver possession in execution of a decree where no specific prayer for possession had been made in a suit for specific performance. It held that the proviso appended to Sub-section (2) of Section 22 of the 1963, which mandates the Court to allow an amendment of the plaint at any stage of the proceeding to include a claim for such relief under Clause (a) or (b) of Section 22(1), renders the provision directory in nature. The Court opined that Section 22(2) is qualified by the phrase “in an appropriate case”, referring to situations where such relief does not necessarily flow from a decree for specific performance of a sale agreement. Accordingly, if such relief under Clause (a) or (b) of Section 22(1) appears as a necessary implication of the decree for specific performance, a specific prayer for claiming such relief would not be required. In light of these principles, this Court held that the relief of possession was inherently included in a decree for specific performance and need not be specifically pleaded. Furthermore, it reiterated that the words “at any

stage of the proceeding” have a wide amplitude, encompassing both the appellate stage and execution proceedings. The relevant observations are reproduced hereinbelow:

“22. The Bombay High Court in a judgment reported as Lotu Bandu Sonavane v. Pundalik Nimba Koli held that relief of possession is to be claimed “in an appropriate case”. It means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a decree for specific performance, then it is not necessary to specifically seek such a relief and the bar of S. 22(2) would not be attracted. If the defendant is in possession of the property agreed to be sold and the decree directs a specific performance of the agreement of sale, the defendant is bound to execute the sale deed as per the decree and to put the plaintiff in possession of the property as contemplated by S. 55(1)(f) of the Transfer of Property Act. In such a case it is not necessary to specifically claim the relief of possession in the suit.

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9. The term “proceeding” is a very wide and comprehensive term and it includes execution proceeding also. The expression “at any stage of the proceeding” gives widest permission to the Court to allow amendment at any stage of the proceeding including execution of the decree. The amendment can be allowed even in an appeal arising out of the order passed by the executing Court rejecting the prayer for permission. The proviso recognises the well settled position that the Court passing a decree for specific performance retains control over the subject matter as long as anything remains to be done in the case.”

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26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, “no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed”, but the proviso takes out the mandatory nature from the substantive provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief “at any stage of the proceeding”. “At any stage of the proceeding” would include the proceeding in suit or in appeal and also in execution. The proviso to sub-section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under subsection (2) of Section 22. [...]

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29. To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real

intention of the legislature by carefully attending to the whole scheme of the statute. Keeping in view the scheme of the statute, we find that Section 22(2) of the Act is only directory and thus, the decree-holder cannot be non-suited for the reason that such relief was not granted in the decree for specific relief.

30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression “at any stage of proceeding” is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in Babu Lal has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor.”

(Emphasis supplied)

58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under Section 22 of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an “appropriate case” exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in ***Desh Raj v. Rohtash Singh, reported in (2023) 3 SCC 714***. The relevant observations are reproduced hereunder:

“35. On a plain reading of the above-reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.

36. Applying these principles to the facts of the case in hand, we find that the respondent has neither prayed for the relief of

refund of earnest money in the original plaint nor he sought any amendment at a subsequent stage. In the absence of such a prayer, it is difficult to accept that the courts would suo motu grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of the SRA Act is to be construed directory or mandatory in nature.”

(Emphasis supplied)

As regards the amendment of the plaint for incorporating averments regarding the plaintiff's readiness and willingness, it is incumbent upon the plaintiff to plead and prove the same. The case is still at a preliminary stage, as even the issues have not yet been framed and the trial has not formally commenced.

At this juncture, it is relevant to refer to Order VI Rule 17 of the CPC, which is reproduced below:

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the 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 trial. ”

The condition of "due diligence" as stipulated in the proviso to Order VI Rule 17 CPC applies only after the commencement of trial.

As regards the question of limitation, it is submitted that no new cause of action has been introduced. The alternative relief of refund of earnest money, as held by the Hon'ble Supreme Court in ***K.R. Suresh vs. R. Poornima & Ors. (supra)***, can even be raised for the first time at the appellate stage. Furthermore, an amendment to the plaint generally relates back to the date of

institution. In the present case, there is no exception to that principle, as the inclusion of averments relating to the plaintiff's readiness and willingness does not amount to a new relief or cause of action.

The precedents relied upon by the defendants do not bar the amendment of the plaint in the specific facts and circumstances of this case.

7. In view of the above discussion, the application filed by the plaintiff under Order VI Rule 17 CPC for amendment of the plaint is allowed.

The amended plaint is taken on record.

8. **The application stands disposed of accordingly.**

9. The defendants are at liberty to file a written statement to the amended plaint on or before the next date of hearing.

10. Put up for further proceedings on **08.09.2025**.

(Vikas Garg)
DJ-05/East/KKD
Delhi/14.07.2025