

HIGH COURT OF PUNJAB AND HARYANA**Bench: JUSTICE GURBIR SINGH.****Date of Decision: December 14, 2023**

Case No.: C. R. No. 2266 of 2022

M/s PPC Exports Pvt. Ltd. ... Petitioner**vs.****M/s Ganpati Controls & Switch Gears Pvt. Ltd. and others ...
Respondents****Legislation and Rules:**

Article 227 of the Constitution of India

Order 1 Rule 10, Order VI Rule 17, Section 151 of the Code of Civil Procedure (CPC)

Subject: Revision petition challenging the order of the Additional Civil Judge (Senior Division), Gurugram, which dismissed the petitioner's application for amendment of the plaint in a suit involving agreement to sell industrial premises and subsequent alleged encumbrances.**Headnotes:**

Challenge to Plaint Amendment Dismissal – Plaintiff/petitioner sought amendment in a suit based on an agreement to sell dated 02.11.2017, with the defendant allegedly failing to clear encumbrances from the property - Proposed amendments sought to address subsequent developments including settlement with UCO Bank and unauthorized sale of property - Amendment application dismissed by Additional Civil Judge [Paras 1, 3-4, 10-14].

Principles of Pleading Amendment – Application of legal principles regarding amendment of pleadings – Amendments should not alter the basic structure or cause of action of the original suit – Necessity to decide real controversy between parties without changing nature of suit [Paras 5-7, 9, 10, 13-15].

Decision – Revision petition dismissed – The Court upheld the lower court's decision, finding that the proposed amendment would change the nature of the original suit and introduce a new cause of action, which is not permissible [Paras 16-18].

Referred Cases:

- Rajesh Kumar Aggarwal and others vs. K.K.Modi [(2006) 4 SCC 385]
- Mahila Ramkali Devi and others vs. Nandram (Dead) through Legal Representatives and others [(2015) 13 SCC 132]
- Modi Spg. Mills vs. Ladha Ram and sons [AIR 2002 SC 3369 (3372)]
- Co-operative Housing Society Ltd. vs. Jayanthibhai Naginbhai [AIR 2009 SC 1948]
- Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another [Law Finder Doc Id # 2029338]

Representing Advocates:

Petitioner: Mr. Shailender Jain, Senior Advocate with Ms. Navneet Kaur, Advocate and Mr. Avin K. Sandhu, Advocate

Respondent No. 1: Mr. S. P. Arora, Advocate and Mr. Himanshu Arora, Advocate

Respondent No. 2: Ms. Saloni Sharma, Advocate for Mr. Prateek Mahajan, Advocate

Respondent No. 3: Mr. Parveen, Advocate for Mr. K.K. Tiwari, Advocate

* * * **GURBIR**

SINGH , J. :

1. Challenge in this revision petition, filed under Article 227 of the Constitution of India, is to the order dated 16.04.2022 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Gurugram, whereby application moved by the plaintiff/petitioner, for amendment of the plaint, has been dismissed.

2. The brief facts, as culled out from the paper-book, are that respondent no.1/defendant no.1 entered into an agreement to sell dated 02.11.2017, of industrial premises along with construction thereon, as mentioned in the plaint. On coming to know that the suit property was not free from encumbrances and respondent no.1 owed a huge sum of money to UCO Bank, the petitioner filed a suit for – decree for mandatory injunction, directing respondent no.1 to obtain transfer permission from respondent no.2, to make payment of outstanding amount to respondent no.2 HSIDC, to make payment to UCO Bank, to get the premises in question released and redeemed from the Bank, with a further prayer that if respondent no.1 fails or refuses to make the required payments to HSIDC and UCO Bank, then the petitioner be allowed to make the total payments on behalf of respondent no.1. Further, a decree for permanent injunction restraining respondent no.2 from resuming the premises in question during pendency of the suit was also sought.
3. During pendency of the said suit, petitioner came to know that respondent no.1 had entered into compromise with UCO Bank and settled the matter by clearing the dues. 'No Dues Certificate' dated 10.04.2019 was also issued and lien of the property in dispute stood ceased. The petitioner moved an application under Order 1 Rule 10 CPC praying for striking out the names of UCO Bank and DC, Gurugram (respondents/defendants no.3 and 4 respectively) from the array of parties and also moved an application for amendment of plaint under Order VI Rule 17, read with Section 151 CPC, seeking relief of possession by way of Specific Performance of the Contract. The said application was partly allowed by the Court with regard to relief of striking off the names of respondents/defendants no.3 and 4 from the array of parties and relief regarding amendment in the pleadings was declined.
4. In the meanwhile, it came to the notice of the petitioner that respondent/defendant no.1 has alienated the suit property in favour of one Rakesh Yadav vide sale deed dated 21.09.2021 in order to defeat the claim of the petitioner and even did not obtain prior permission for such transfer from respondent no.2 HSIDC. So, an application under Order 6 Rule 17 CPC was moved for amendment of plaint seeking relief of declaration that the sale deed dated 21.09.2021 is illegal, null and void.
5. Learned counsel for the petitioner has argued that the impugned order dated 16.04.2022 is against the settled principles of law. The proposed amendment is necessary for determining the real controversy between the parties. The amendment sought is bona fide and would not change the nature of pleadings and relief sought in the suit. The original suit was based on rights arising out

of the agreement to sell dated 02.11.2017 and it was the same agreement, which formed the basis of cause of action. Ultimately, the objective of the petitioner in filing the suit was to obtain the ownership and possession over the suit property.

6. It has further been argued by learned counsel for the petitioner that the Courts are required to decide the rights of the parties. The cause of action to file the suit for possession by way of specific performance arose only during pendency of the suit as the compromise between respondent no.1 and UCO Bank came into picture only during pendency of the suit. The agreement dated 04.05.2016, on which the learned Court below has relied, could be fictitious and illegal document and could have been created to defeat the rights of the petitioner. At the stage of allowing prayer for amendment, merits of the amendment sought to be incorporated are not to be adjudged. Reliance in this regard has been placed on **Rajesh Kumar Aggarwal and others vs. K.K.Modi** reported as **(2006) 4 SCC 385**. The amendments of pleadings are generally allowed if the trial has not yet started. In the present case also, the trial was not yet commenced when application for amendment was filed. It is further submitted that the purpose of allowing the amendment is to minimize the litigation and the same is intended for promoting the ends of justice and not for defeating the same. Learned counsel has relied upon a judgment of Hon'ble Supreme Court in the case of **Mahila Ramkali Devi and others vs. Nandram (Dead) through Legal Representatives and others** reported as **(2015) 13 SCC 132**. Reliance has also been placed on **Mohinder Kumar Mehra vs. Roop Rani Mehra and others** – **Law Finder Doc Id # 944633**, **Rajesh Kumar Aggarwal (supra)**, **Sampath Kumar vs. Ayyakannu and another** – **Law Finder Doc Id # 2224**, **Boya Pikkili Venketaswamy vs. Boya Ramakrishnudu** – **Law Finder Doc Id # 420829**, **I.S. Sikandar (D) by LRs vs. K. Subramani and others** – **Law Finder Doc Id # 494000** and a judgment of this Court in **Rajesh Kapoor vs. Sukhdev Singh and another** – **(2022) Law Today Live Doc Id # 17001**.

7. Learned counsel for respondent no.1 has argued that before the agreement to sell dated 02.11.2017, respondent no.1 had already executed an agreement to sell dated 04.05.2016 with Rakesh Yadav and others. In the agreement dated 02.11.2017, it was specifically stated it was the agreement of sale executed provisionally. The amount of Rs.1,00,000/-, paid to the respondent out of total consideration of Rs.3 crores, was refunded to the petitioner on the very next date since all the documents were drafted on the blank papers signed from the respondents. Clause No.10 of the agreement to sell clearly provided that in case of any defective title or any loss caused to the vendee, the vendor and its estate shall be liable to compensate the vendee. The amount outstanding against HSIDC already stood paid on 09.11.2018. In para no.13 of the plaint, it is specifically mentioned that cause of action for filing suit for possession by way of specific performance of contract has not yet arisen to the plaintiff, as required transfer permission has not been issued by HSIDC and the amendment sought by the petitioner would amount to substitution of new suit with the present one and the same cannot be allowed. If totally different and new case is introduced, then the proposed amendment needs to be rejected. Reliance in this regard has been placed on **Modi Spg. Mills vs. Ladha Ram and sons** reported as **AIR 2002 SC 3369 (3372)**. Learned counsel has further argued that a party cannot seek to alter the basic structure of the suit and when amendment is not necessary to decide the real controversy between the parties, then the same cannot be allowed. Further reliance has been placed on **Co-operative Housing Society Ltd. vs. Jayanthibhai Naginbhai** reported as **AIR 2009 SC 1948** and **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another - Law Finder Doc Id # 2029338**.
8. Learned counsel for respondent no.2 has argued that the petitioner is not entitled to claim any relief against respondent no.2/defendant no.2.
9. I have heard the submissions of learned counsel for the parties and perused the case file.
10. In case **Sanjeev Builders (supra)**, Hon'ble Supreme Court has

held as under :-

“70. Our final conclusions may be summed up thus:

- (i)** Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.
- (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.
- (v)** In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.
- (vi)** Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

- (vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) *Delay in applying for amendment alone is not a ground to disallow the prayer.*
Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
- (x) *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
- (xi) *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”*

11. The instant suit has been filed by the petitioner on 15.11.2018, with prayer, which reads as under :-

“It is therefore prayed that a decree for mandatory injunction directing the deft. no.1 to obtain the transfer permission from deft. no.2 after rectifying the required deficiency as sought by deft. no.2 and also to make payment of Rs.61,84,607/to deft. no.2 towards outstanding amount in respect of the premises in question and also to make payment of the Rs.2,13,49,386/38 to the deft. No.3 bank towards the outstanding payments of term loans and get the premises in

question released and redeemed from the bank after receiving back the title deeds lying deposited with the bank and also to get the proceedings under SARFAESI Act passed by deft.no.4 be discontinued and finished, be passed in favour of the plaintiff and against the defts. with costs. In the alternative, if deft. no.1 fails or refuses to make the required payments to defts. no.2 & 3 i.e. HSIIDC and Bank, then the plaintiff be allowed to make the total payments of Rs.2,75,33,933/38 to the respective defts. on behalf of the deft.no.1, be passed in favour of the plaintiff and against the defts. with costs. Further a decree for permanent injunction restraining the deft. no.2 from resuming the premises in question on account of non-payment of Rs.61,84,607/- and also restraining the defts. no.3 & 4 from taking any further steps of any kind under the SARFAESI Act in respect of the premises no.587, admeasuring 1012.5 sq mtr. alongwith constructions thereupon measuring 20279.376 sq. ft. approx. situated in Sector-8, Industrial Estate, IMT Manesar, Distt. Gurugram, till the final disposal of the suit, be passed in favour of the plaintiff and against the defts, with costs.

Any other relief, which this Hon'ble Court may found just and proper, be also granted to the Plaintiff.”

12. The suit has been filed by the plaintiff/petitioner on the basis of cause of action, as mentioned in para no.14 of the plaint. In para no.13, it is pleaded that cause of action to file suit for specific performance has yet not arisen. Para nos.13 and 14 of the plaint read as under :-

“13. That cause of action for filing the suit for possession by way of specific performance of contract has yet not been arose to the plaintiff as required transfer permission has not been issued by HSIIDC after receiving the balance outstanding amount and payment of bank loans outstanding against the deft. no.1 is made and the proceedings under SARFAESI Act are not finally finished and thus cause of action for filing suit for mandatory and permanent injunction is available to the plaintiff. Hence this suit.

14. That the cause of action for filing the present suit arose in the end of Oct.2018 when the deft. no.1 refused to make the payment of the outstanding amounts detailed above. Hence cause of action.”

13. Now, plaintiff/petitioner is seeking to amend the suit. The proposed amendment is as under :-

*“(i) The heading of the plaint is to be replaced from “Suit for Mandatory and Permanent Injunction” to “**Suit for Declaration, Mandatory & Permanent Injunction & Possession by way of Specific Performance of Contract**”.*

(ii) That a new paragraph 10 (A) is to be added as under :

“10A. That now it has come to the notice of the plaintiff that during the pendency of the suit, a compromise has taken place between the deft. no.1 and Uco Bank on 25.1.2019 vide which the loan accounts of the deft. no.1 were settled through that compromise and payment has been received by the Uco Bank from deft. no.1 in terms of the compromise dt.25.1.2019 and No dues Certificate under Settlement/Compromise with the bank A/c M/s Ganpati Control & Switch Gears Pvt. Ltd. has been issued by the bank in favor of the deft. no.1 on 10.4.2019 and the lien over the property in dispute stood ceased from the records of the deft.no.2 i.e. HSIIDC and now the relief of specific performance of contract under the agreement in question on the basis of which the present suit was filed, has become available to the plaintiff seeking a decree for specific performance of contract for the execution and registration of the required sale deed in respect of the premises in question after receiving the balance sale consideration from the plaintiff by the deft. no.1 and also after bearing stamp and registration charges to be incurred at the time of the registration of the sale deed in question and also the deft. no.1 be restrained to alienate the premises in question to any person other than the plaintiff and the deft.no.2 be restrained to transfer the premises in question in favor of any other person/company other than the plaintiff. Hence this suit.”

(iii) That a new paragraph 10 (B) is to be added as under :

“10B. That the plaintiff has always been ready and willing to perform its part of contract by getting the required sale deed executed and registered in its favor in respect of the industrial premises no.587 admeasuring 1012.5 sq. mtr. alongwith constructions thereupon measuring 20279.376 sq. ft. approx. situated in Sector8. Industrial Estate, IMT Manesar, Distt. Gurugram after making the balance sale consideration and after bearing stamp and registration charges for which the plaintiff has sufficient amount for the same and the plaintiff is still ready and willing to get the sale deed executed and registered in its favor after bearing stamp and registration charges but it is the deft. no.1 who has failed to perform its part of contract and has denied to execute the required sale deed and get it registered in favor of the plaintiff. Hence this suit.”

(iv) That the para no.11 of the existing plaint is to be read as under :

“11. That on coming into the knowledge of these amazing subsequent events, the applicant rebuked the respondent no. 1 for such concealments of bank loans and proceedings under SARFAESI Act and payments to HSIIDC and asked him to clear all the outstanding amounts in order to clear the title of the premises in question as the applicant is still ready and willing to purchase the premises in question and he has sufficient amount in his bank accounts in the shape of FDRs but again the

respondent no. 1 paid no heed to this request of the applicant which goes to prove the dishonest intention of the respondent no. 1. But now after receiving the payments of the loan amount by the bank from the respondent no. 1 and after issuing NOC dt.25.4.2019 in that behalf the necessity of seeking the relief of possession by way of specific performance of contract dt.2.11.2017 has become available to the applicant to file the present suit in the present shape.”

(v) That a new paragraph 12 is to be added as under :

“12. That after passing the order dt.13.10.2021, it has now come to the notice and knowledge of the plaintiff that deft.no.1 during the pendency of the suit, has malafidely, dishonestly and illegally and without jurisdiction and without notice and knowledge of the plaintiff, secretly alienated the suit property no.587, admeasuring 1012.5 sq. mtr. alongwith constructions thereupon measuring 20280 sq. ft. approx. situated in Sector-8, Industrial Estate, IMT Manesar, Distt. Gurugram in favor of Sh. Rakesh Yadav s/o Sh. Roshan Lal Yadav r/o D-94, Ground Floor, South City-II, Sohna Road, Sector-49, Gurugram-122018, Sh. Harkesh Tiwari s/o Sh.Rajendra Tripathi r/o H.No.E-124, IRWO Classic Apartment, Sector 57, Rail Vihar, Wazirabad, Gurugram-122003 and Sh.Sanjeev Jindal s/o Sh. Balwant Rai r/o H.No.130-P, Sector15 Part I, Gurugram - 122001 who were well aware with regard to agreement in question dt.2.11.2017 and also about the pendency of the present litigation, vide Regd. Sale Deed bearing no.4718 dt.21.9.2021 for a fictitious sale consideration of Rs.2,85,00,000/- in order to defeat the claim of the plaintiff and even without obtaining prior permission for such transfer/sale deed from the deft. no.2 HSIIDC which is in the gross violations of Govt. orders, in order to defeat the claim of the plaintiff and this fact has not been disclosed by the deft. no.1 till today and thus the sale deed in question is illegal, unauthorized, without jurisdiction. nullity and ineffective against the rights of the plaintiff and the same is liable to be set aside. Certified copy of Regd. Sale Deed No.4718 dt.21.9.2021 is attached herewith.”

(vi) That a new paragraph 13 is to be added as under :

“13. That after the sale agreement, the deft. no.1 was only a trustee of the suit property on behalf of the plaintiff and he was not authorized to have any further negotiation with any other person and the right of deft. no.1 was left only to receive the balance sale consideration and to get the sale deed executed and registered in favor of the plaintiff.”

(vii) That a new paragraph 14 is to be added as under :

“14. That the sale deed no.4718 dt.21.9.2021 in respect of the suit property executed by deft. no.1 in favor of the above named three persons, is totally illegal, unauthorized, without jurisdiction and is void and nullity in the eyes of law as the deft. no.1 was trustee on behalf of the plaintiff of the suit property and he had no right or authority to alienate the same in favor of those persons who were well aware about the existing agreement to sell dt.2.11.2017 in favor of the plaintiff and also about the pendency of the present suit in respect of the suit property and thus the sale deed in question is hit by doctrine of lis pendens and thus the sale deed in question is required to be ignore against the rights of the plaintiff and those three persons Rakesh Yadav s/o Sh. Roshan Lal Yadav, Harkesh Tiwari s/o Sh.

Rajendra Tripathi and Sanjeev Jindal s/o Sh. Balwant Rai defts. no.3 to 5 are also liable to join deft. no.1 in execution and registration of the sale deed in respect of the suit property in favor of the plaintiff in execution of the decree to be passed in this suit in favor of the plaintiff and thus the present suit for possession by way of specific performance of the contract and declaration after ignoring the sale deed in question executed by deft. no.1 in favor of those three persons Rakesh Yadav s/o Sh. Roshan Lal Yadav, Harkesh Tiwari s/o Sh. Rajendra Tripathi and Sanjeev Jindal s/o Sh. Balwant Rai as defts. no.3 to 5, is being filed by the plaintiff.”

(viii) That a new paragraph 15 is to be added as under :

“15. That now the deft. no.1 in collusion with the subsequent vendees i.e. defts. no.3 to 5 and got the sale deed in question effected with a view to cause irreparable injury to the plaintiff and now they are further trying to alienate the suit property secretly and to leasing out the same and also trying to change the nature of the land in question with a view to cause irreparable injury to the plaintiff and under law they are liable to be restrained from further alienating the land in question in any manner and changing the nature of the said land by raising any kind of constructions thereupon till the decision of the suit and thus a decree for permanent injunction restraining the defts. no.3 to 5 from alienating or transferring the suit property or leasing out the same to any person and also to change its nature by raising any kind of constructions thereupon during the pendency of the suit is also being sought in this suit.”

(ix) That existing para no.12 has become redundant in view of the present subsequent events and thus the same is liable to be deleted.

(x) That the existing para no.13 is to be renumbered as para no.16 and to be replaced as under :

“16. That cause of action arose for filing the suit for possession by way of specific performance of contract has now become available to the plaintiff after the receiving of the loan amount by Uco Bank from the deft. no. 1 and after issuing NOC dt.10.4.2019 by the bank and the lien over the property in dispute stood ceased from the records of the deft.no.2 HSIIDC and subsequently after 13.10.2021 when the factum of execution of sale deed no.4718 dt.21.9.2021 came to the notice and knowledge of the plaintiff. Hence cause of action.”

(xi) That existing para no.14 has become redundant in view of the present subsequent events and thus the same is liable to be deleted.

(xii) That the existing para no.15 is to be renumbered as para no.17.

(xiii) That the existing para no. 16 is to be renumbered as para no.18.

(xiv) That the existing para no.17 is to be renumbered as para no.19 and to be replaced as under :

“19. That the value of the suit for purposes of court fee and jurisdiction is Rs.3,00,00,000/- being the total sale consideration of the premises in question for the relief of specific performance of contract and Rs.200/- each for the relief of declaration, mandatory and permanent injunction on which advalorem court fee of Rs.3,19,000/- has been paid on the plaint.”

(xv) That para no.18 of the existing plaint is to be renumbered as para no.20.

(xvi) That the existing para no.19 is to be renumbered as para no. 21 and to be replaced as under :

“21. It is therefore prayed that a decree for possession by way of specific performance of the contract in question be passed in favor of the plaintiff and against the defts. in respect of the premises in question bearing no.587, admeasuring 1012.5 sq. mtr. alongwith constructions thereupon measuring 20279.376 sq. ft. approx. situated in Sector 8, Industrial Estate, IMT Manesar, Distt. Gurugram after declaring/holding the sale deed no.4718 dt.21.9.2021 executed and registered by deft. no.1 in favor of the defts.no.3 to 5, as illegal, unauthorized, without jurisdiction and is void and nullity and the same is not binding on the rights of the plaintiff and the defts.no.1, 3 to 5 have been left with no right, title or interest in it and the deft. no.1 be directed to execute the required sale deed of the suit property and to get the same registered in the office of Sub Registrar Manesar, Distt. Gurugram after receiving the balance sale consideration as per the agreement to sell dt.2.11.2017, after obtaining the transfer permission from deft. no.2 after rectifying the required deficiency as sought by the deft. no.2 and also after making the outstanding dues to deft. no.2 by the deft. no.1 and the defts. no.3 to 5 be directed to join the deft. no.1 with regard to the execution and registration of the sale deed in respect of the suit property in favor of the plaintiff and the vacant and peaceful possession of the suit property be delivered to the plaintiff, be passed in favor of the plaintiff and against the defts. with costs.

Further a decree for permanent injunction restraining the defts. no.3 to 5 from alienating the premises in question to any person other than the plaintiff and to lease out the same to any person and also to change its nature by raising any kind of constructions thereupon during the pendency of the suit, be also granted to the plaintiff and against the defts. no.3 to 5 as a consequential relief thereof.

Further a decree for permanent injunction restraining the deft. no.2 from transferring the name of any other person/company other than the plaintiff in respect of the suit property, during the pendency of the suit be also granted to relief thereof. plaintiff and against the deft. no.2 as a consequential.

Any other relief which this Hon'ble Court may deem just and proper be also to the Plaintiff.”

14. From the pleadings of the plaintiff/petitioner himself, it is seen that cause of action to file the suit for possession by way of specific performance of contract has not yet arisen but respondent/defendant no.1 refused to make the payment of the outstanding amounts, so the suit has been filed. The plaintiff, by way of amendment, wants to replace the heading of the plaint to – suit for declaration, mandatory & permanent injunction and possession by way of specific performance of the contract. He wants to replace many paras of the plaint. He also wants to plead that cause of action to file the suit for specific performance has arisen on 10.04.2019 when ‘No Dues Certificate’ was issued by UCO Bank and lien of the property in dispute stood ceased and subsequently after 13.10.2021, when the factum of execution of sale deed dated 21.02.2021 came to the knowledge of the petitioner. As per the version of the plaintiff/petitioner himself, cause of action for filing suit for possession by way of specific performance of contract has not yet arisen to the plaintiff at the time of filing suit for mandatory and permanent injunction. It is also clear that other reliefs sought by the plaintiff/petitioner regarding payments to the Banks also stood satisfied as all the outstanding amounts have been paid during pendency of the suit. The plaintiff/petitioner, by way of amendment, wants to substitute new cause of action with the previous one. In other words, plaintiff/petitioner wants to bring the suit afresh for specific performance of the agreement to sell and possession of the suit property and for declaration that the sale deed dated 21.09.2021, executed by respondent no.1, is illegal, null and void. In other words, plaintiff wants to set up a new case and wants to change the cause of action also. In view of **Sanjeev Builders (supra)**, such amendment cannot be allowed. Since the relief sought in the suit already stands satisfied, the plaintiff/petitioner cannot be allowed to continue the suit by seeking amendment and further relief in the same suit. The amendment can only be allowed if it is necessary for deciding the real controversy between the parties regarding the pending suit and not beyond that. At the time of allowing the amendment, merit of amendment is

not to be seen and the amendments, which are necessary for just decision of the case, can only be allowed. In case **Mohinder Kumar Mehra (supra)**, amendment was allowed with a direction to the Trial Court to consider issue regarding limitation on merits while deciding the suit. In case **Rajesh Kumar Aggarwal (supra)**, it is held that if basic structure of the suit is changed, then amendment cannot be allowed. In **Sampath Kumar (supra)**, the Apex Court is of the view that suit for permanent injunction was already converted to suit for possession as the plaintiff was forcibly dispossessed during pendency of the suit. The other authorities relied upon by learned counsel for the petitioner are distinguishable on fact and cannot be applied to the facts of the case in hand. They are of no help to the petitioner.

15. Keeping in view the fact that the entire nature of the suit would change including cause of action if amendment is allowed as the plaintiff/petitioner wants to substitute the suit with a new suit, this Court is of the view that learned Trial Court has rightly dismissed the application for amendment.
16. In view of the above, I find no reason to interfere in the impugned order dated 16.04.2022 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Gurugram, whereby application moved by the plaintiff/petitioner, for amendment of the plaint, has been dismissed.
17. The present revision petition is without any merit and the same is accordingly dismissed.
18. Pending applications, if any, shall stand disposed of along with this judgment.

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