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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 25th OF JANUARY, 2023

MISC. PETITION No. 4724 of 2022

BETWEEN:-

**BALAK RAM SHARMA S/O LATE RAM DAYAL SHARMA,
AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURE
VILLAGE ANDHUAA POST INDRANA TAHSIL PANAGAR
DISTRICT JABALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJAY KUMAR SHARMA - ADVOCATE)

AND

**SONU BARMAN S/O SHRI SATYANARAYAN BARMAN,
AGED ABOUT 28 YEARS, VILLAGE SAKRI POST
INDRANA TAHSIL PANAGAR DISTRICT JABALPUR
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ANUP SHUKLA - ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

This Miscellaneous Petition is filed under Article 227 of the Constitution of India, being aggrieved of order dated 28.01.2020, passed in Civil Suit No.723-A/2018, by learned Civil Judge, Junior Section, Jabalpur.

2. Petitioner's contention is that respondent-plaintiff had filed a suit for specific performance and in the alternative had claimed for refund of the advance paid by him. Plaintiff paid Court Fees on Rs.1 Lakh i.e. the amount which was sought to be refunded and did not pay the Court Fees in accordance with the terms and conditions of the agreement for specific performance of

which was sought.

3. Petitioner had moved an application under Order 7 Rule 11 of Code of Civil Procedure (hereinafter referred to as CPC for short). That application was allowed vide order dated 02.12.2019 and plaintiff was directed to pay Court Fees as per the terms and conditions of the agreement on Rs.4,26,000/- which was the subject matter of the agreement. Thereafter, case was fixed on 24.01.2020 when instead of asking the plaintiff to first pay the Court Fees in accordance with the earlier order dated 02.12.2019, application under Order 6 Rule 17 CPC was taken and defendant was given time for filing reply.

4. Petitioner's contention is that no time could have been given to the plaintiff without making compliance of the order dated 02.12.2019, whereby, plaintiff was directed to pay Court Fees as per the correct valuation.

5. This being the bone of contention, it is submitted that the action of the learned trial Court being illegal and arbitrary deserves to be set aside.

6. Shri Anup Shukla, in his turn, submits that since land in question for which agreement was executed was already sold and registered in favour of a third party and when this fact came to the knowledge of the plaintiff, therefore, an amendment application was filed deleting the relief of specific performance and only seeking refund of the earnest money. It is submitted that earlier this application was rejected in the first round by the learned trial Court, but when an application under Section 114 CPC was filed for review, then in the review application Court allowed amendment in the plaint and, accordingly, amendment was carried out in the plaint in terms of order dated 19.01.2022 on 02.02.2022. It is submitted that the petitioner has not filed any petition challenging order dated 19.1.2022, whereby, review was allowed.

7. Thus, there being no provision in law to not to permit amendment in the plaint before the stage of framing of the issues only on the ground that an application under Order 7 Rule 11 CPC was allowed, at the instance of the defendant, present petition is nothing, but a tactics to seek dismissal of the suit so to misappropriate Rs.1 Lakh, which was paid as an earnest money while executing the agreement for sale.

8. As per the law laid down in *Sumanatta Mohapatra Vs. Dobananda Samantray and others (1985 SCC Online Orissa 240)*, a Court while considering an application for amendment should always keep in mind;

(a) Whether the amendment sought for is necessary for proper and effective adjudication of the subject matter in the case ?

(b) Whether the proposed amendment completely and fundamentally changes the nature and character of the stand taken by the party concerned or in other words puts up a completely new case ?

(c) Whether by allowing the proposed amendment any right vested in other party by lapse of time is going to be materially affected?

(d) Whether the party concerned has been able to offer a reasonable explanation by the application for amendment could not be made before the trial Court ?

9. If answers to the questions under (a) and (d) are in the affirmative and answers to (b) and (c) are in the negative, the application for amendment cannot be thrown out merely because allowing it would necessitate further evidence to be taken in the case.

10. In *Kishandas Rupchand and others Vs. Rachappa Vithoba Shilvant and others [ILR (1909) 33 Bom.644]*, has held that all amendments ought to

be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.

11. This observation of Bachelor, J. have been followed in case of *Suraj Prakash Bhasin Vs. Smt. Rajrani Bhasin and others [(1981) 3 SCC 652]* and *Usha Balasaheb Swami and others Vs. Kiran Appaso Swami and others [(2007) 5 SCC 602]*. Thus, it is evident that if the aforesaid two conditions are specified, then amendment can be allowed.

12. It is also settled that Order 6 Rule 17 CPC confers wide discretion on a Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as it deem fits. When this aspect is taken into consideration and examined in terms of the proviso inserted by the Amendment Act, 2002, then taking this fact into consideration that trial had not commenced and there was a circumstance dealing with the aspect of alienation of land specific performance of which was sought seeking amendment in the plaint to delete the relief of specific performance and in its place taking relief of refund of the earnest money cannot be said to be an arbitrary exercise of power in the hands of the learned trial Court. Therefore, the action of the trial Court in allowing an application under Order 6 Rule 17 CPC after allowing an application on the basis of unamended pleadings under Order 7 Rule 11 CPC cannot be said to be illegal or arbitrary calling for interference in the supervisory jurisdiction of this Court.

13. Accordingly, this Misc. Petition fails and is dismissed.

A.Praj.

