



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5713-2019 (O&M)

Kim Infrastructures and Developers Ltd.

. . . . Petitioner

Vs.

M/s K.B. Machine and Factory and others

. . . . Respondents

Reserved on: 23.07.2026

Pronounced on: 27.07.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. S.S. Behl, Senior Advocate with
Ms. Raageshwari Sharma, Advocate
for the respondent.

DEEPAK GUPTA, J.

Petitioner herein is the plaintiff in civil suit bearing CIS No.CS-634-2016 titled "*Kim infrastructures vs. M/s KB Machines and others*" pending before learned Civil Judge (Junior Division), Amritsar. Petitioner is aggrieved by order dated 13.08.2019 (*Annexure P-11*), whereby trial Court has dismissed its application under Order VI Rule 17 CPC for amendment of the plaint.

2. Brief facts of the case are that the petitioner-plaintiff instituted a suit for specific performance of an agreement to sell dated 18.05.2012 executed by respondent No.1-firm through its partners, namely respondent Nos.2 to 4, in respect of the suit property for a total sale consideration of ₹7,63,75,000/-. An amount of ₹1,52,75,000/- was paid as earnest money at

the time of execution of the agreement and a further amount of ₹76,00,000/- was allegedly paid on 01.12.2012. The sale deed was agreed to be executed on or before 16.03.2013. Alleging continuous readiness and willingness to perform its part of the contract and asserting that the defendants avoided execution of the sale deed despite service of legal notice dated 25.01.2014, the petitioner instituted the present suit seeking specific performance. In the alternative, the petitioner also claimed recovery of ₹4,57,50,000/-, comprising refund of the earnest money along with damages.

3. The defendants contested the suit by disputing the plaintiff's readiness and willingness and denied its entitlement to the discretionary relief of specific performance.

4. During the pendency of the suit, respondent No.2 Gian Singh expired. Respondent Nos.3 and 4 moved application seeking their impleadment as his legal representatives on the strength of a registered Will dated 23.08.2007. The petitioner opposed the application on the ground that all the natural legal heirs had not been disclosed. Nevertheless, the trial Court allowed the application and impleaded respondent Nos.3 and 4 as legal representatives of the deceased partner.

5. Subsequently, the defendants filed an application (*Annexure P-4*) expressing their willingness to honour the agreement and prayed for passing of a decree in favour of the plaintiff.

6. Instead of pressing for adjudication of that application, the petitioner moved an application (*Annexure P-5*) under Order XI Rules 1, 12 and 14 CPC seeking interrogatories regarding the remaining legal heirs of deceased Gian Singh. The said application was dismissed by the trial Court. The petitioner challenged that order before this Court by filing CR No.1379 of 2019, which came to be disposed of vide order 04.07.2019 (*Annexure P-6*), granting liberty to the petitioner to raise all objections regarding execution of the sale deed before the trial Court while considering the defendants' application seeking decree on admission.

7.1 Thereafter, the petitioner filed the application (*Annexure P-9*) under Order VI Rule 17 CPC seeking extensive amendment of the plaint. The amendment application proceeded on the premise that a dispute regarding the validity of the Will executed by deceased Gian Singh was pending between his legal heirs. According to the petitioner, such litigation created uncertainty regarding the defendants' title and exposed the petitioner to future litigation in the event a decree for specific performance was granted. On that basis, the petitioner sought:

- deletion of the relief of specific performance;
- deletion of the pleadings regarding readiness and willingness;
- incorporation of facts relating to the litigation amongst the legal heirs;
- conversion of the suit into one seeking only recovery of the earnest money and damages; and
- consequential amendment in valuation and court fee.

7.2 The petitioner asserted that these amendments had become necessary owing to subsequent events and were essential for avoiding multiplicity of proceedings.

8. The defendants opposed the application contending that the amendment was merely an attempt to wriggle out of a concluded contract after they themselves had offered to suffer a decree for specific performance.

9. The trial Court accepted the objections of the defendants and dismissed the application by the impugned order (*Annexure P-11*).

10. Assailing the above order, learned counsel for the petitioner contends that the learned trial Court erred in declining the amendment sought under Order VI Rule 17 CPC. It is submitted that subsequent developments during the pendency of the suit, particularly the dispute amongst the legal heirs of deceased respondent No.2 regarding the validity of his Will, cast a cloud over the title of the suit property. It is further argued

that upon demarcation, the area available on the spot was found to be less than what had been agreed to be sold. In these circumstances, the petitioner was justified in seeking to abandon the relief of specific performance and pursue only the alternative relief of recovery of earnest money and damages in terms of Section 21 of the Specific Relief Act. Reliance has been placed upon ***Lokesh and others v. Rameshwar Tyagi, 2018(1) RCR (Civil) 248; Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647; Shri Orlando Dias and another v. Additional Development Commissioner, Goa, Daman and Diu, 2004 (2) Goa L.R. 207; and Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr., 2022 AIR (SC) 4256.***

11. *Per contra*, learned senior counsel appearing for the respondents supports the impugned order and submits that the proposed amendment is a mala fide attempt to wriggle out of the contractual obligations after the respondents had themselves expressed willingness to perform the agreement and sought a decree for specific performance. It is argued that if the petitioner intended merely to relinquish the relief of specific performance, the appropriate course was to invoke Order XXIII Rule 1 CPC and not to seek amendment of the plaint by introducing an altogether different case. It is further contended that the alleged dispute regarding the title no longer survives, as the suit as well as the appeal challenging the Will of deceased Gian Singh already stand dismissed. The respondents also contend that the plea regarding deficiency in the area of the property is an afterthought and does not justify alteration of the nature of the suit. Reliance has been placed upon ***Smt. Latha v. Sri Rakesh and others, Law Finder Doc Id #2262462***, to contend that such an amendment, which fundamentally changes the nature of the suit, is legally impermissible.

12. This Court has given its thoughtful consideration to the rival submissions and has carefully perused the record.

13. The execution of the agreement to sell dated 18.05.2012, the ownership of respondent No.1-firm over the suit property and the institution of the suit for specific performance are undisputed. Equally undisputed is the

fact that in the original plaint, the petitioner unequivocally asserted its continuous readiness and willingness to perform its part of the contract and sought a decree for specific performance, with recovery of earnest money and damages only in the alternative.

14. During the pendency of the suit, respondent No.2 Gian Singh expired. Respondent Nos.3 and 4 were brought on record as his legal representatives on the strength of a registered Will dated 23.08.2007. It is also not disputed that a civil suit challenging the said Will was instituted by the daughters of deceased Gian Singh. However, the said suit had already been dismissed by the Civil Court and, during the course of hearing before this Court, learned senior counsel appearing for the respondents has stated that even the appeal preferred against the said judgment has since been dismissed. Consequently, the very foundation, on which the petitioner alleges a defect in the title of the respondents, no longer survives.

15. The chronology of events assumes considerable significance. Before the petitioner sought amendment of the plaint, the respondents themselves had moved an application before the trial Court expressing their willingness to honour the agreement and praying that the suit be decreed in favour of the petitioner. Instead of pressing for adjudication of that application, the petitioner chose to initiate proceedings under Order XI CPC seeking interrogatories regarding the legal heirs of deceased Gian Singh. Upon dismissal of those applications, the petitioner approached this Court by way of Civil Revision No.1379 of 2019, which was disposed of on 04.07.2019 (Annexure P-6) by granting liberty to the petitioner to raise all objections before the trial Court while considering the respondents' application. Shortly thereafter, the present application for amendment of the plaint came to be filed.

16. The aforesaid sequence unmistakably indicates that the proposed amendment was not occasioned by any subsequent event fundamentally affecting the maintainability of the suit, but was prompted by

a change in the petitioner's own approach towards enforcement of the agreement.

17. It is well settled that although amendments of pleadings are to be liberally allowed for determining the real controversy between the parties, the jurisdiction under Order VI Rule 17 CPC is nevertheless discretionary. An amendment cannot be permitted, where it fundamentally changes the nature and character of the suit, introduces an altogether inconsistent case, or is found to be lacking in bona fides.

18. Examined on the touchstone of these settled principles, the amendment sought by the petitioner cannot be regarded as a mere elaboration of the existing pleadings. Rather, it seeks to completely alter the foundation on which the suit was instituted. By the proposed amendment, the petitioner intends to delete the principal relief of specific performance, delete the pleadings regarding readiness and willingness, introduce allegations regarding an alleged defect in title and convert the suit substantially into one confined to recovery of money and damages. Such amendment is not merely consequential or clarificatory but amounts to substitution of the very basis of the suit.

19. It is true that there is no legal prohibition against a plaintiff abandoning the relief of specific performance. However, the right to relinquish a relief cannot be equated with an unfettered right to rewrite the entire plaint by introducing an altogether different factual and legal foundation. If the petitioner intended merely to abandon the relief of specific performance, the Code provides an appropriate procedure under Order XXIII for relinquishment of such claim. What is sought in the present case is something materially different, namely, conversion of the suit itself on the basis of allegations which were never part of the original cause of action.

20. The judgment of the Hon'ble Supreme Court in ***Jagdish v. Natthu Singh (supra)*** in fact, fortifies this distinction. The Supreme Court in the abovesaid case; categorically held that while a liberal approach is warranted, where compensation is sought in addition to or in substitution of specific

performance without abandoning the principal relief, a different and less liberal standard applies where the amendment seeks conversion of a suit for specific performance into one for damages for breach of contract. The present case squarely falls within the latter category.

21. Likewise, the reliance placed upon ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr., (supra)*** is misconceived. In the said case, the plaintiffs continued to pursue the relief of specific performance and merely sought enhancement of the amount claimed towards compensation on account of escalation in the value of the property during prolonged pendency of the litigation. The Supreme Court reiterated the liberal approach governing amendments under Order VI Rule 17 CPC in such circumstances. The present case stands on an entirely different footing. Here, the petitioner seeks not enhancement of an existing alternative claim but deletion of the principal relief itself together with all foundational pleadings supporting that relief. The ratio of the said judgment, therefore, has no application to the facts of the present case.

22. The decision of this Court in ***Lokesh and others v. Rameshwar Tyagi (supra)*** is equally distinguishable. In that case, the vendor himself lacked a marketable title to the property and consequently the purchaser was held entitled to seek refund of the earnest money. In the present case, however, there is no dispute whatsoever regarding the respondents' title at the time of execution of the agreement or institution of the suit. The dispute projected by the petitioner arose only after the death of one of the partners and was founded upon inter se succession disputes amongst his legal heirs. Those proceedings have admittedly culminated against the objectors. Consequently, the petitioner cannot legitimately contend that any subsisting defect in title survives so as to justify abandonment of the principal relief.

23. Similarly, the judgment in ***Shri Orlando Dias v. The Additional Development Commissioner (supra)*** arose in an altogether different factual context involving withdrawal of the relief of specific performance under Order XXIII Rule 1 CPC and does not lay down that a plaintiff is entitled, as of

right, to amend the plaint under Order VI Rule 17 CPC by substituting an entirely new cause founded on subsequent events.

24. Viewed from any angle, therefore, the proposed amendment cannot be regarded as one necessary for determining the real controversy between the parties. On the contrary, it seeks to substitute the original cause of action by introducing a fundamentally inconsistent case. The subsequent events relied upon by the petitioner have themselves ceased to survive and consequently furnish no legal justification for permitting such amendment. The exercise of discretion by the trial Court in refusing the amendment is thus neither arbitrary nor perverse.

25. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, interference is warranted only where the subordinate Court has acted without jurisdiction, committed a patent error of law or exercised its discretion perversely. The impugned order suffers from none of these infirmities. Rather, the learned trial Court has exercised its discretion on sound judicial principles and in consonance with the settled law governing amendment of pleadings.

26. Consequently, finding no illegality, perversity or jurisdictional error in the impugned order dated 13.08.2019, the present revision petition is dismissed.

July 27, 2026
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes

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