

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.1232 of 2011.
Decided on:-08.01.2015.

Radhey Sham.Petitioner.

Versus

Parshotam Dass.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Dinesh Kumar, Advocate for
Mr. M.K. Singla, Advocate
for the petitioner.

Mr. Pardeep Goyal, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

A suit for recovery of Rs.4,74,281.94 Ps. alongwith interest is pending adjudication before Civil Judge (Junior Division), Sunam. Issues in this case were framed on 25.4.2007 and the case was fixed for evidence of the plaintiff. Out of said issues framed, issue No.1 being relevant is being reproduced as below:

“Whether the plaintiff is entitled to recover the amount of Rs.4,74,281.94 Ps. alongwith interest @ 1% per month till 31.3.2005? OPP”

2. Though initially, the matter was contested by the defendant but later on, by way of an amendment sought in the written statement, the

defendants without denying the case of the plaintiff took a plea that the plaintiff had purchased the paddy straw valued at Rs.4,40,942.50 Ps. And only set off for the said amount was sought. By way of such amendment, plea of the plaintiff, in fact, was conceded in entirety and only set off was claimed. Consequently, the court framed an additional issue No.1-A reading as under:

“Whether the plaintiff has purchased Barley husk (Paddy husk) from the defendant worth Rs.4,40,942.50 Ps. against his payment and same is liable to be set off from the alleged recoverable amount? OPD”

3. Though as per the earlier order on 25.4.2007 when issues were framed, the plaintiff was being called upon to produce his evidence but after amendment of the written statement, entire scenario changed resulting in filing of an application by the plaintiff before the lower court for fixing the case for evidence of the defendant in view of the admission made by him regarding case of the plaintiff and having put forth only the plea of set off. Though this application was contested by the defendant, the lower court came to a definite conclusion that having admitted the case of the plaintiff, the plaintiff was no more required to produce his evidence and now, the evidence was to be led by the defendant regarding claim of set off put forth by him. Relevant portion of the impugned order with approval is being reproduced as below:

“Since after the amendment in the pleadings, defendant has filed the amended written statement and he has pleaded for setting off the amount with the amount claimed by the plaintiff as he has alleged that plaintiff has purchased the paddy/barley husk from the defendant worth Rs.4,40,942.50 Ps. and his payment is liable to be set off from the alleged recoverable amount. Meaning thereby the defendant has admitted the claim of the plaintiff and has prayed for setting off the amount of alleged purchased of paddy/barley husk by the plaintiff and further admitted that defendant is liable to pay Rs.4963.52 Ps. to the plaintiff. So, in these circumstances, the plaintiff is not

required to prove his case rather the onus has shifted upon the defendant to prove that plaintiff has purchased barley/paddy husk from the defendant worth Rs.4,40,942.50 Ps. and this payment is liable to be set off from the alleged recoverable amount from the plaintiff. So, in these circumstances, it is the defendant who should lead evidence first instead of the plaintiff on the issues onus of which was placed upon the plaintiff. Hence, the application is allowed. Now, the defendant is directed to lead the evidence and for this purpose to come upon 15.2.2011.”

4. When subsequent to the amendment, additional issue has been framed, the same is basically in substitution of issue No.1 already framed and the earlier issue No.1 has become redundant. Now, evidence is to be led by the defendant to prove his counter-claim.

5. Keeping in view the facts and circumstances, as discussed earlier, the impugned order does not suffer from any factual or legal error and no ground to interfere with the same is made out. Sequently, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

January 08, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes