

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2531 of 2012 (O&M)

Date of decision:04.02.2015

Inderjit Singh

....Petitioner

Versus

Naresh Puri

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Vipin Mahajan, Advocate, for the petitioner.

Mr.Shiv Kumar, Advocate, for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 05.04.2012 (Annexure P6), whereby the application for additional evidence, filed by the petitioner-defendant has been dismissed by the Trial Court at Pathankot. The reasoning given by the Addl.Civil Judge (Sr.Divn.), Pathankot, is that the factum of the cheque of ₹6 lacs was not in the knowledge of the defendant or the witnesses and has not been pleaded and the defendant cannot be allowed to travel beyond the pleading, especially when the case was fixed for arguments.

Counsel for the petitioner has argued that he only wants to place on record the statement of account, maintained by the Union Bank of India, Gurdaspur Branch, by way of additional evidence to show that an amount of ₹6 lacs had been withdrawn from the account of the petitioner-defendant and was deposited in the account of the father of the plaintiff-respondent, vide cheque No.976690, to show that there were many transactions between the defendant and the father of the plaintiff.

Counsel for the respondent-plaintiff, on the other hand, has submitted that the applicant did not fulfil the necessary requirements, as to why

the said document was not brought on record earlier, when the evidence was being led by the defendant.

After hearing counsel for the parties, this Court is of the opinion that the suit revolves around recovery of the huge amount to the tune of ₹50 lacs as principal amount and ₹15 lacs as interest, which is based on the cheques issued by the father of the plaintiff. It is alleged that a friendly loan had been taken by the defendant from the father of the plaintiff and after the death of the father, Raghunath Sahai Puri on 22.12.2007, the defendant had become liable to pay the said amount along with interest and even demand notice had been served upon him and thereafter, the suit was filed.

It is pertinent to notice that the Trial court has missed out the plea which has been taken by the defendant which goes on to show that the specific stand of the petitioner-defendant was that there were many transactions between him and the father of the plaintiff. Accordingly, this Court is of the opinion that the document which is sought to be brought on record by way of additional evidence is of unimpeachable character, being the record of the Bank. It would have been just and equitable if the application would have been allowed as it would only show that the parties were having money transactions *inter se* which is the defence of the petitioner-defendant. By disallowing the application, serious prejudice has been caused to the defendant though, strictly speaking, the requirement of not placing the necessary document earlier has not been pleaded in the application. However, for the fault of the counsel, not to make specific averments, it would be unfair to restrict the right of the petitioner-defendant to lead evidence and bring on record necessary facts. Specific plea in the written statement is that a sum of 30 lacs had been handed over to the father of the plaintiff in cash in the month of October, 2006 and thereafter, they had been repaid in two instalments, vide two different cheques and no loan had been taken.

It has also been averred that they were having good relations and the deceased had been contesting the elections for the MLA and therefore, had required the money, which had been returned by him. In such circumstances, the Trial Court was not correct in recording a finding that the evidence, which was sought to be led, was beyond the pleadings. Reliance can be placed upon a judgment rendered by this Court in *Hans Raj Vs. Surinder Kaur & others 2010 (2) CCC 377 (P&H)* wherein it has been held that merely because of some delay and lapse on the part of the counsel to produce the evidence at the initial stage would not be a sufficient ground, to disallow the application to lead additional evidence.

Accordingly, the order dated 05.04.2012 (Annexure P6) is set aside and the defendant-petitioner is permitted to place on record the said statement of account. The Trial Court shall give two effective opportunities to the petitioner to produce the bank witness, for proving the said document. Needless to say that the plaintiff-respondent will be at liberty to controvert the said evidence in case he so wishes. Any observation made herein shall not prejudice the Trial Court, which shall proceed in the matter, in accordance with law.

With the abovesaid observations, the present revision petition stands allowed.

04.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE