

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 298 of 2015

Date of decision : 14.1.2015

Makhan Singh

.....Petitioner

v.

Manjit Rai

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present : Mr. Harkaran Singh, Advocate, for the petitioner

Rakesh Kumar Jain, J.

The petitioner has challenged order dated 9.12.2014 by which his application for amendment of the plaint has been rejected.

Learned counsel for the petitioner has submitted that the petitioner/plaintiff has filed suit for recovery on the ground that the respondent has borrowed a sum of ₹ 1,90,000/-from him. The respondent thereafter repaid the amount by way of cheque No.171470 dated 21.10.2008 of the aforesaid amount which was dishonoured on 5.11.2008 because of 'Insufficient Funds'. It is further alleged that besides the amount of ₹ 1,90,000/-, the plaintiff is also entitled to recover ₹ 3,99,147.30 on account of sale of his paddy crop to the respondent and is, thus, entitled to recover ₹ 5,89,147.30 which has not been paid by the respondent despite repeated requests and demands. Thus, the suit was filed for recovery of ₹ 7,01,000/- after adding ₹ 1,11,852.70 towards interest @ 12% per annum. On the pleadings of the parties, issues were framed on 16.3.2011 and while leading his evidence, the plaintiff moved an application for amendment of the plaint for the addition of the following words :-

“On dated 1.5.2005, and after receiving the cash payment from plaintiff,

the defendant issued a receipt on his letter pad, in favour of the plaintiff and the defendant agreed to pay interest @ 1.25% per month, which is to be paid after every six months. Original receipt dated 1.5.2005 is enclosed herewith.”

The prayer for this amendment in the plaint has been rejected by the learned trial Court, inter alia, on the ground that the plaintiff has not made any reference of any receipt issued by the respondent in lieu of the cash payment made on 1.5.2014 by the plaintiff. There is also no pleadings with regard to factum of loss of receipt in 2005. Learned counsel for the petitioner has argued that the amendment being sought is necessary for proper adjudication of the lis between the parties even if the application is filed at the stage of his evidence.

I have heard learned counsel for the petitioner and examined the record.

As a matter of fact, the petitioner wanted to make an averment with regard to the issuance of receipt of the loan amount given by him. It cannot be believed that the question of execution of receipt by the respondent in favour of the petitioner was not within his knowledge as nothing has been mentioned in the original plaint about execution of the receipt, even if, it is alleged to have been lost especially, when the plaintiff has been advancing loan to the respondent on interest. Therefore, the case set up by the petitioner does not fall within the realm of inadvertence exercise of due diligence at the time when the suit was filed. Accordingly, the present revision petition is devoid of merits and hence dismissed.

(Rakesh Kumar Jain)
Judge

14.1.2015
Ashwani