

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

CR No. 435 of 2015 (O&M)

Date of decision : 17.7.2015

Vinod Kapoor

... Petitioner

VS

Indu Bala and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Naveen Sharma and
Mr. Ajay Veer Sharma, Advocates, for the petitioner.

Rajesh Bindal, J.

The plaintiff has challenged the order dated 26.11.2014 passed by the learned Court below whereby the application filed by him for amendment of the plaint was dismissed.

The application was filed in a suit filed by the petitioner-plaintiff for mandatory injunction directing the defendants to return the cheque given as security and also to withdraw the notice issued by them under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

Learned counsel for the petitioner submitted that the parties to the dispute were close friends. Certain loan was raised by the petitioner against which a cheque was given as security. Though the loan was returned, however, the cheque was yet to be returned by the respondents, which was misused. The suit was filed seeking a direction against the respondents to return the cheque. The amendment was sought only to the extent that out of sum of ₹ 1,25,000/- due from the respondents to the petitioner, ₹ 50,000/- payable by him as arrears of rent be reduced and balance ₹ 75,000/- be paid. The amendment was not going to change the nature of the suit, which was at the initial stage. No prejudice was going to be caused to the respondents.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order.

The petitioner filed the suit for mandatory injunction directing the respondents to return the cheque which allegedly was given by him as security. The suit was filed after the respondents had issued a notice to the petitioner under Section 138 of the Act on account of dishonour of the cheque issued by the petitioner. Though it is sought to be claimed that the parties to the dispute are friends, however, there is no material on record to suggest that there was litigation regarding eviction between the parties initiated by respondent no. 2 against the petitioner on 3.1.2013 seeking eviction. The same was decided against the petitioner vide order dated 1.5.2013 as he had failed to pay the provisional rent assessed. The order of the Rent Controller was upheld in appeal on 14.3.2014. Though it is claimed in the suit that in March, 2013, besides returning ₹ 2,25,000/- taken as advance from respondent no.2, he had paid further sum of ₹ 1,25,000/- to enable them to purchase some property, however, the facts as mentioned are apparently contradictory as in eviction petition filed by respondent no.2 against the petitioner, he was directed to be evicted vide order dated 1.5.2013 having failed to tender the provisional rent assessed vide order dated 10.4.2013. The plea sought to be raised by way of amendment is that the petitioner made a request to the respondents to deduct ₹ 50,000/- out of ₹ 1,25,000/- and pay the balance amount of ₹ 75,000/-. The suit was filed by the petitioner on 16.9.2013 after the respondents had already filed the complaint under Section 138 of the Act on 5.8.2013.

Considering the aforesaid factual matrix on record, I do not find that the learned Court below has committed any error in dismissing the application filed by the petitioner for amendment of the plaint. The petition is accordingly dismissed.

17.7.2015
vs

(Rajesh Bindal)
Judge