

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.5471 of 2013.

Decided on:-February 06, 2015.

M/s Love Trading Company and anotherPetitioners.

Versus

Randhir Singh.Respondent.

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

Argued by:- Mr. Rajinder Goyal, Advocate
for the petitioners.

Mr. Raj Kapoor Malik, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Vide order dated 7.8.2013, amendment in the written statement sought by the defendant by way of an application under Order VI Rule 17 read with Section 151 CPC to incorporate plea of set off with consequential modifications, was allowed. The plaintiff, petitioner herein, has challenged this order.

2. Perusal of the paper book reveals that when an application for amendment of the written statement to incorporate plea of set off was made, no reply was even filed by the plaintiff, petitioner herein. Only argument advanced from the plaintiff was that the amendment, if allowed, would be time barred as only legally recoverable sum of money can be claimed as set

off under Order VII Rule 6 CPC. Discussing all these aspects at a great length and elaborately discussing the entire issue, the application was allowed by the lower Court.

3. Even in this revision petition, main plea of the plaintiff is that the set off sought for by way of amendment in the written statement is regarding the amount pertaining to the year 2008-09 and thus, is clearly barred by limitation. Support has been sought from ***M/s Maruti Udyog Limited, New Delhi Versus M/s Blue Star Limited 1994 (3) RRR 488 (P&H)***. Relevant portion of para 16 of this judgment referred to by learned counsel for the petitioner-plaintiff reads as under:

“In order to prefer a claim of set off the party preferring such a claim is under an obligation to prove that the amount was legally recoverable. The amount which is barred by limitation cannot be held to be amount recoverable.”

4. Counsel for the respondent, on the other hand, has urged that undoubtedly, time barred claims cannot be allowed to be claimed by way of setoff by introducing amendment in the written statement but there was fiduciary relationship between the parties and it was a running account and thus, there is no application of law of limitation.

5. Both the parties have been heard at length.

6. The present dispute relates to recovery of Rs.3,70,000/- alongwith pendente lite and future interest by the plaintiffs who are commission agents. The defendant, respondent herein, was a customer of the petitioner-plaintiff firm. He used to sell his agricultural produce through the petitioner-firm. It is claimed that the account was never settled and thus, law of limitation does not apply. In support of his contention, learned counsel for the respondent has relied upon ***Milkha Singh Versus Parshotam Dass 2007(1) RCR (Civil) 495 (P&H)***.

7. During the course of arguments, no comment has been made with regard to the sum claimed as set off. No plea has been raised regarding validity or legality of the same. Merits of the plea sought by way of amendment in the written statement are also not open to discussion at this stage.

8. Keeping in view the facts and circumstances as discussed earlier, leaving the ground of limitation open to be urged by the petitioner-plaintiff at an appropriate stage, finding no infirmity in the impugned order, this petition being devoid of any merit is dismissed.

February 06, 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