IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.6038 of 2011
Date of Decision:19.02.2015

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Amrik Singh and another

. . . . Petitioners

Vs.

Kirpal Singh and others

. . . .Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Sandeep Chhabra, Advocate,
for the petitioners.

Mr.Abhishek Arora, Advocate,
for respondent No.1.

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RAKESH KUMAR JAIN, J.

The petitioners have challenged order dated 24.8.2011 for amendment of the written statement in respect of 'set off' in which he wanted to include para No.7A in preliminary objections as 'set off' and to add in the prayer in para No.18 of the written statement. The proposed amendment is as under: -

> *"Para No.7-A – Set off: -*
>
> *7-A: That the defendant was commission agent of plaintiff. The defendant sold 240 qntl. Wheat crop, 20 quintal mustard and 50 quintal Jaun during wheat season – 1995, 50 Qntl. Narma crop, Bajri – 40 Qntl. and cotton crop – 15 Qntl. during paddy season, 1995, Wheat Crop, 25 quintal mustard and 30 quintal Jaun during Wheat season -1996, Narma crop – 75 quintal, and cotton crop-10 Qntl. were sold during paddy season – 1996, in Wheat season -1997, 280 Qntl. Wheat Crop, 15 quintal mustard and 45 quintal Jaun, in paddy season, 1997, narma crop –*

85 Qntl., cotton crop – 10 Qntl. and 50 Qntl. Gwari crop were sold, in Wheat season - 1998, the defendant sold 240 Qntl. Wheat crop, 20 quintal mustard and 50 quintal Jaun were sold, in paddy season, 1998, 24 Qntl. narma crop and 10 Qntl. cotton crop were sold, in Wheat season – 1999, the defendant sold 30 Qntl., Wheat crop, 20 Quintal mustard and 50 quintal Jaun were sold, while in paddy season, 1999, 65 Qntl. narma crop and 20 Qntl. mustard and 60 Qntl.wari crop were sold, in Wheat season – 2000, 240 Qntl. Wheat crop, 60 quintal Jaun and 15 quintal mustard were sold, while in paddy season, 2000, 65 Qntl. narma crop, 15 Qntl. cotton crop and 60 Qntl. Gwari crop were sold. Moreover, on 17.10.2001, Gwari crop having a price of ₹17,1787.05, on 29.10.2001, narma crop having a price of ₹39,623.58, on 10.11.2001, narma crop having price of ₹40,948.27 and on 20.10.2001, narma crop having price of ₹35,039/- was sold. If, in any circumstances, suit for recovery, filed by the plaintiff is decreed, the payment against above noted crops of the defendant and interest on the said amount @ 1% per month is liable to be recovered from him."

In para No.18 of the written statement, the following wording may be added: -

"And in case the suit of plaintiff is decree under any circumstances, the amount of above noted crops mentioned in the above given set of claim, alongwith interest @ 1% per annum per month may be deducted from

> *the decretal amount and remaining amount may be got paid to the defendant."*

In brief, respondent No.1 filed a suit for recovery of ₹7,09,535/- out of which ₹5,60,000/- are towards the principal and ₹1,49,355/- towards the interest, alleging that he is running the business of commission agent at Budhlada in the name and style of M/s Dashmesh Commission Agent. The petitioners have been selling their crops to the plaintiff and receiving the amount in lieu of their crops from time to time. He gave a detail of the amount due and asked for recovery with interest @ 1% per month.

In the written statement, the defendant initially did not take the plea of 'set off' but by virtue of the amendment application, he wanted to plead 'set off' in para No.7A of the preliminary objection and also wanted to add in the prayer in para No.18 that he may be given the 'set off' against his claim if the suit for recovery is decided in favour of the plaintiff. The application was dismissed by the learned trial Court on 24.8.2011.

In the present revision petition, notice of motion was issued when the petitioners relied upon a decision of this Court in the case of ***"Milkha Singh*** *Vs.* ***Parshotam Dass"*** *2007(1) RCR (Civil) 495* and later on passing of the final order was stayed. At one point of time, this case was referred for mediation but ultimately it was referred back by the Mediator to the High Court because the mediation was not successful.

Learned counsel for the petitioners, being alive to the law of limitation that even in 'set off', the amount cannot be claimed, which is otherwise barred by limitation, has submitted that in case of equitable 'set off' strict law of limitation does not apply and has referred to the decision in the case of **Milkha Singh (Supra).**

On the other hand, learned counsel for respondent No.1 has submitted that the aforesaid judgment is not applicable to the facts and circumstances of the present case because the petitioners are even claiming the 'set off' of the amount of the year 1995 whereas the application for amendment has been filed in the year 2007.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that there is no merit in the present revision petition because this Court in the case of **Milkha Singh (Supra)** has referred to the distinction between the 'legal set off' or 'equitable set off', which reads as under: -

> *"Legal set-off and equitable set-off: Distinction*
>
> *Equitable set-off differs from legal set-off. The following are the points of difference between the two :*
>
> *(a) Legal set-off must be for an ascertained sum of money. Equitable set-off may be allowed even for an unascertained sum of money.*
>
> *(b) Legal set-off can be claimed as of right and the court is bound to entertain and adjudicate upon it. Equitable set off, on the other hand, cannot be claimed as of*

right and the Court has discretion to refuse to adjudicate upon it.

(c) In a legal set-off, it is not necessary that the cross-demands arise out of the same transaction. Equitable set-off can be allowed only when the cross-demands arise out of the same transaction.

(d) In a legal set-off, it is necessary that the amount claimed as set-off must be legally recoverable and must not be time barred. A claim by way of equitable set-off may be allowed even if it is time barred when there is fiduciary relationship between the parties.

(e) A legal set-off requires a court-fee, but no court fee is required in case of an equitable set-off".

In view of the aforesaid distinction provided in Clause (c), the 'equitable set-off' can be allowed only when the cross demands arise out of the same transaction whereas the petitioners are making the cross demands of the year 1995, which is not the case of the plaintiffs. Thus, there is no error in the order passed by the Court below and hence, the present revision petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

19.02.2015
Vivek