

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

**Civil Revision No. 6486 of 2015 (O&M)
Date of decision:- 01.10.2015**

Ashok Kumar Vig

...Petitioner

Versus

M/s Berkley and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. H.N. Mehtani, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 27.08.2015 (P-5) whereby the application filed by the plaintiff/petitioner (for short 'petitioner') under Order 41 Rule 27 CPC has been dismissed and order dated 20.03.2013 (P-2) passed by the learned Civil Judge, Panchkula, whereby the prayer of the petitioner to allow his revision petition and permit him to produce additional evidence under Order 41 Rule 27 CPC has been dismissed.

Brief facts of the case are that the petitioner filed a suit for recovery of damages to the tune of Rs.52,500/- along with interest

from the date of encashment i.e 06.02.2007 of the cheque bearing No. 135146 dated 01.02.2007, due to the negligence and connivance of defendant Nos. 1 to 3. The petitioner approached respondent No. 1 for purchase of a car make 'Maruti Swift' 2007 by getting it financed from some Bank to which respondent No. 1 gave his proposal. The petitioner paid Rs.1 lacs in cash on 30.01.2007 and Rs.30,000/- on 31.01.2007 in cash and a cheque of Rs.20,941/- was issued in favour of M/s Berkley Auto Mobiles drawn on ICICI Bank, Sec 11, Panchkula and was handed over the representative of defendant No. 1. Thereafter, petitioner gave one blank cheque No. 135146 drawn on Central Bank of India, Sector 10, Panchkula in good faith and received delivery of his car after completing all formalities on 31.01.2007. Later on the petitioner came to know that Rs.52,500/- had been withdrawn from his account on 06.02.2007 with the remarks of "paid to self", which was made vide impugned cheque No. 135146. The request of the petitioner before the learned trial Court to procure handwriting expert to compare his signatures was declined on 18.05.2012 (P-1) on the ground that no prior permission could be obtained by the concerned Clerk from his office in this regard and remaining evidence of the petitioner had been closed and no application for adducing additional evidence by way of examining handwriting expert had been moved by the petitioner at any stage.

A perusal of the above said order shows that the evidence of the petitioner was closed on 18.11.2011 and no application for adducing additional evidence by way of examining handwriting expert had been moved by the petitioner at any stage.

Thereafter, the suit filed by the petitioner was dismissed vide judgment and decree dated 20.03.2013. Thereafter, the petitioner filed an appeal before the Lower Appellate Court and during the pendency of the appeal, the petitioner preferred an application seeking permission to lead additional evidence by pleading that the cheque of the petitioner had been misused by the representative of defendant No. 1 and 2 in connivance with respondent No. 3. This application was dismissed on the ground that the petitioner himself had admitted that he had issued impugned cheque as blank cheque and it is not the case that he had filled up the future date in the cheque, thus, now the petitioner cannot say the cheque had been forged by making cutting and putting his initials on the relevant portion. This information ought to have been in the knowledge of the petitioner on the very first day of institution of the suit before the trial Court i.e on 07.05.2008, so he should have prayed to summon the record to during the course of his evidence and he has taken the plea to summon the expert witness when the respondent produced the cheque Ex D1 in the evidence. He has not exercised due diligence to

adduce evidence when his evidence was in progress

In view of the above, a presumption is drawn that the petitioner had given the impugned cheque on his own and no forgery had been committed by the defendants. Both the Courts below had rightly dismissed the applications filed by the petitioner.

The revision petition is devoid of merit and is accordingly dismissed.

01.10.2015

G Arora

(***RITU BAHRI***)
JUDGE