IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7663 of 2011(O&M)
Date of decision:15.01.2015

Kesar Singh

....Petitioner

Versus

Kashmir Singh

......Respondent

CR No.7664 of 2011(O&M)

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CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Hitesh Kaplish, Advocate, for the petitioner.

Mr.B.D.Sharma, Advocate, for the respondent.

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G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 14.11.2011 (Annexure P1), whereby the application for re-examination of the witness, namely, Mangal Singh by the defendant-petitioner had been dismissed. The reasoning given is that the written statement did not reveal the fact that Mangal Singh's statement was recorded in the office of the SSP, Kapurthala and the statement was beyond the pleadings of the defence raised. The Trial court has also recorded the aspect that the statement of PW2 had been recorded on 19.04.2011 and the evidence of the plaintiff stood concluded on 10.05.2011.

In CR No.7664 of 2011, the application for examining the year and month of the revenue stamps over the pronote and receipt from the security Press, Nasik, filed by the defendant-petitioner, has been dismissed by the Trial Court. The reasoning given is that the old revenue stamps can also be used for affixing on receipts and therefore, it is for the defendant to prove whether he had executed the pronote with the Khakh Securities and the same has been misused.

Counsel for the petitioner has vehemently submitted that the suit is based on a pronote dated 30.08.2008, for recovery of ₹2,14,600/- and the principal amount was ₹1,85,000/- and the interest element was to the extent of ₹29,600/-. It is submitted by the defendant-respondent that the pronote was not executed with the plaintiff/respondent but a cash loan had been taken from one Khakh Finance, of which, one Gurmail Singh was the Proprietor and the said receipts had been misused.

In the evidence, plaintiff had examined PW2, Mangal Singh, who is now, sought to be recalled. The ground for recalling was that he had got his statement recorded before the SSP, Kapurthala in the application filed by Kesar Singh, the present petitioner on account of misuse of the papers. The witness could not be cross-examined regarding the statement before the SSP, Kapurthala and thus, sought to be cross-examined on that account.

Admittedly, the reasoning given by the Trial Court is that the pleadings were not laid in the written statement to that aspect. Counsel for the parties are not disputing the factum that the statement before the SSP, Kapurthala was recorded on 27.10.2010. The replication filed by the plaintiffs to the said written statement is dated 22.08.2010, after the written statement being filed and thus, in such circumstances, a fact which had taken place subsequently, could not have been got recorded in the written statement. Thus, the reasoning given by the Trial Court is not justified and cannot be sustained.

Since the allegations of forgery and fabrication of the pronote have been made and the amount involved is also substantial, in such circumstances, it would have been appropriate for the Trial Court to recall the witness so that the interests of the petitioner could be looked after for further cross-examining/recording the statement of PW2, Mangal Singh. The application having been filed immediately after 10.05.2011, the witness could have been recalled, as the power of the Court to do so is not disputed. In such circumstances, it cannot be submitted that an effort was made to delay the proceeding. Resultantly, the order whereby the application has been dismissed for recalling the witness, PW2 is not justified and accordingly, the said order is quashed and the revision petition is allowed, accordingly. The Trial Court shall summon the said witness for re-examination, in view of the reasons given above. It is made clear that the cross-examination will be made only regarding the aspect of making statement before the police.

In CR No.7664 of 2011, challenge to the order dated 14.11.2011, regarding the age of the revenue stamps is not justified in view of the reasons given that the revenue stamps could always be of an earlier date and thus, it cannot validly prove the factum as to whether the pronote, as such, was of 30.08.2008 or that the stamps were of an older date. Accordingly, CR No.7664 of 2011 is dismissed.

The petitioner shall pay costs of ₹5000/-, to the plaintiff before cross-examining the summoned witness.

15.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE