In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1414 of 2016 (O&M)

Date of Decision: 25.02.2016

Harbhajan Singh

... Petitioner(s)

Versus

Punjab National Bank

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1.	Whether reporters of local newspapers may be allowed to see judgment?	**Yes**
2	To be referred to reporters or not?	
3	Whether the judgment should be reported in the Digest?	**Yes**

Present: Mr. Namit Gautam, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 17.11.2015, passed by learned Additional Civil Judge (Senior Division), Nakodar whereby application filed by the present petitioner for amendment of written statement was dismissed.

Learned counsel for the petitioner mainly submitted that plaintiff has filed main suit for recovery under Order 34 CPC. Present petitioner (defendant) had filed written statement and by way of proposed amendment, petitioner wants to take the following additional pleas:

"8. That the defendant has taken a loan from the plaintiff bank but it was repaid totally as the defendant has a plan to move to another bank namely Capital Local Area Bank, Branch Malsia, District Jalandhar for the said purpose bu tit was not materialized. Despite execution of documentation in favour of Oriental Bank of Commerce, Branch Nakodar, District Jalandhar. So, the defendant obtained the loan from the plaintiff bank on 31.08.2007. But the defendant did not execute any balance conformation on 05.08.2010 as it was got signed on the same day of loan. Since the plaintiff bank did not file the suit for recovery within limitation period so the present suit is liable to be dismissed due to being filed after expiry of limitation. Moreover, the rate of interest is payable less, in comprise to alleged I the plaint, if the plaintiff bank is held entitled to the amount by this Hon'ble Court."

Similarly, the para No.2 of the written statement on merits would read as under after the amendment.

"2. That the contents of the para are not fully correct as defendant has obtained loan but repaid the same but as detailed reply has been give 8 of the Preliminary objections. So, he did obtain loan in the year 2007 but he did not execute any letter of confirmation in

2010."

Similarly, after the amendment the para no.3 would read as under after the amendment.

"3. That the contents of para are not fully correct as detailed reply has bee given while reply has been given while replying para No.2 on merits. It is correct that defendant mortgage the land as a security."

Similarly, after the amendment the para no.4 would read as under after the amendment.

"4. That the contents of the para are correct to the extent that the documentation was don on 31.08.2007 and no execution of any was don I the year 2010 and the rate of interest of 6% p.a. and not 13.50% p.a. Remaining averments of interest are denied."

Similarly, after the amendment the para no.5 would read as under after the amendment.

"5. That the contents of para are matter of record but the contents are denied."

Similarly, after the amendment the para no.6 would read as under after the amendment.

"6. That the contents of the para are matter of record but the defendant has repaid sum instalments as well. But the plaintiff bank did not supply the account statement with lead to dispute between the

parties."

Similarly after the amendment the para no.7 would read as under after the amendment.

"7. That the contents of the para are wrong hence denied as due to non-accounting of installments paid, dispute has arisen. Remaining averments are denied."

The Court below has dismissed the application without taking into consideration the relevant facts and the fact that the proposed amendment goes to the root of the case and are most relevant for the purpose of decision of the main litigation.

Learned counsel for the petitioner has placed reliance upon the judgments rendered by coordinate Benches of this Court in cases ***Sagar Singh Slathia v. Surinder Pal Singh 2009(3) RCR (Civil) 37, Gautam Sarup v. Anand Sarup and Others 2006(4) RCR (Civil) 248, Gujjar Singh v. Gulzar Singh 1992(1) RRR 13, Daya Ram v. Puran Chand and Another 1974 PLR 100, Tejinder Singh v. Surjit Rai and Another 2012(5) RCR (Civil) 566*** and ***Neetu Goel v. Yogesh Goel 2013(1) RCR (Civil) 667***.

Having considered the submissions made by learned counsel for the petitioner and the judgments rendered by the coordinate Benches of this Court in the above noted cases, this Court is of the considered view that as per amended provisions of Code of Civil Procedure as incorporated under Order 6 Rule 17 CPC, amendment of pleadings can be allowed if the same are necessary for the purpose of determination and decision of real controversy between the parties. However, such an application for amendment should not be allowed after the commencement of trial, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Such a view was taken by Hon'ble the Supreme Court in case ***Ajendraprasadji N. Pande and Another v. Swami Keshavprakeshdasji N. and Others 2007(1) RCR (Civil) 481*** and also by the coordinate Benches of this Court in cases ***Arjun Chand v. Smt. Shama Joshi 2011(2) RentLR 55, Sunil and Others v. Jai Prakash and Another 2013(1) PLR 465*** and ***Mahender Singh Tehlan and Another v. Nirmla Devi and Others (Civil Revision No. 3913 of 2013, decided on 15.7.2013).***

The Court below has rightly considered the amended provisions at the time of passing of the order. Admittedly, issues were framed in this case on 8.5.2014 and thereafter plaintiff’s evidence was concluded on 30.9.2015 and the date fixed was second date for evidence of the defendant. At that time, application for amendment of written statement was filed. In the written statement, defendant had taken the plea that no such loan was taken by him and by way of proposed amendment, he wants to take the contrary plea that he had taken loan in the year 2007 and the same was repaid and he had not executed any balance confirmation letter in the year 2010. All these facts were very much within the knowledge of the petitioner at the time of filing of written statement and present petitioner just wanted to fill up the lacuna and to take contradictory plea. Certainly, such an amendment cannot be allowed especially after commencement of the trial and settlement of issues. On facts, present petition is distinguishable from the facts of the case laws referred to above by learned counsel for the petitioner. Hence, present petition is without any merit and the same stands dismissed, *in limine.*

(Shekher Dhawan)
Judge

February 25, 2016
"DK"