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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.250 of 2015

Date of Decision : 06.12.2017

PUSHKAR @ PUSHKARMAL

....PETITIONER

VERSUS

PARMANAND

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Varun Gupta, Advocate for the petitioner.
Mr. M.S. Randhawa, Advocate for the respondent.

B.S. WALIA, J. (ORAL)

[1] Learned counsel for the petitioner makes a oral prayer for correction of typographical error in the prayer clause by stating that prayer in the petition is for setting aside orders dated 23.12.2014 i.e. Annexures A-1 and A-2 passed by the learned Civil Judge (Jr. Divn.), Narnaul, whereas the same ought to be only for setting aside order Annexue A-1. Oral prayer as made is allowed.

[2] Brief facts of the case leading to the filing of the revision petition are that a suit was filed by the plaintiff-respondent claiming that the defendant-petitioner had taken a loan of Rs.50,000/- from him vide Cheque No.316415 dated 16.11.2017 issued against account No.65010143444, State Bank of Patiala, New Mandi Branch, Narnaul and that he had encashed the same on 17.11.2007 while agreeing to repay the borrowed amount along with interest @ 2% per annum but despite

repeated requests, the defendant-petitioner failed to make payment whereupon Civil Suit No. RT 30/10/12 was instituted on 16.11.2010/17.04.2012. In the written statement, the defendant-petitioner, took up the stand that he had a shop in Village Bhushan Kalan for sale and purchase of crops and had sold 30 sacks of Mustard @ Rs.85 per kg i.e. Rs.1780/- per qtl. for a sum of Rs.45,390/- and 16 sacks of Gram @ Rs.1600/- per qtl. which worked out to Rs.25,600/- to the plaintiff-respondent for which the plaintiff-respondent had issued a cheque dated 16.11.2007 for Rs.50,000/- while assuring to pay the balance amount later.

[3] Defendant-petitioner is aggrieved by order dated 23.12.2014 whereby his evidence was closed by Court order on account of his failure to conclude evidence despite having availed a number of opportunities.

[4] Learned counsel states that in fact defendant-petitioner only seeks to produce on record copy of the *bahi khata* maintained by the defendant petitioner in the usual course of business as the same was not attached along with the written statement. Production of the *bahi khata* at the time of evidence of DW-1 was objected on the ground that in terms of Order 8 of the CPC a document in the possession and power of the defendant is required to be produced in Court while presenting the written statement, and in view of Order 8 Rule 1 A (3) of the CPC, if such document is attached along with the written statement, then the same cannot be received in evidence without leave of the Court.

[5] Learned counsel for the plaintiff respondent contended that the learned trial Court while observing that no document had been specifically pleaded in the written statement and the defendant-petitioner had

straightway tendered the document, thereby prejudice had been caused to the plaintiff-respondent, upheld the objection of the plaintiff by holding that the defendant-petitioner could not produce the document nor could the same be received in evidence on his behalf without leave of the Court. Learned counsel stated that in fact no application was moved for permission to place on record the document sought to be placed on record even though leave of the Court could have been sought. Learned counsel states that in the circumstances, the impugned order does not suffer from any infirmity.

[6] I have considered the submissions of learned counsel for the parties.

[7] Onus for establishing that the cheque had been issued by the plaintiff-respondent on account of purchase made by him from the defendant-petitioner was on the defendant-petitioner, therefore, the defendant-petitioner was to lead evidence on the basis of his stand in the written statement. However, *bahi khata* as was later on sought to be produced was neither referred to in the written statement nor attached to it. Besides, despite grant of number of opportunities, only one DW was examined who as has been noticed above tendered copy of the *bahi khata* without leave of the Court which led to the objection with regard to production of the same being upheld in terms of Order 8 Rule 1(A) of the CPC.

Order 8 Rule 1(A) of the CPC reads as under:-

“1(A).Duty of defendant to produce documents upon which relief is claimed or relied upon by him.- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such

document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents—

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.”

[8] A perusal of Order 8 of the CPC reveals that where the defendant bases a defence upon a document by relying upon any document in his possession or power, he is required to enter such document in a list and to produce it in Court along with the written statement and is also to deliver the same along with the written statement and if the same is not done in terms of Order 8 Rule 1(A) (1), then the same can be produced only with leave of the Court in terms of Order 8 Rule 1(A) (3) of the CPC. Admittedly, the same was not done. Neither the document was mentioned in the written statement nor was any list attached to the written statement nor was the document produced along with the written statement nor was any application moved under Order 8 Rule 1(A) (3) of the CPC seeking leave of the Court to produce the document on record.

[9] Accordingly, no infirmity can be found with the order of the learned trial Court upholding the objection of the surreptitious attempt of the defendant-petitioner to place the *bahi khata* on record while DW-1 was leading evidence.

[10] Faced with the aforementioned situation, learned counsel for the petitioner prays for liberty to move an appropriate application before the learned trial Court. Needless to mention, the petitioner would be at liberty to move an application as per law.

[11] Revision petition dismissed with the aforementioned liberty.

(B.S. WALIA)
JUDGE

December 06, 2017
rajneesh

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No