

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

C.R. No.2360 of 2017

Date of Decision:- 21.04.2017

Varinder Singh

....Petitioner

vs.

Punjab & Sind Bank (Government of India undertaking)
and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. G.S. Saini, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 7.3.2017 (Annexure P-3) passed by Additional Civil Judge (Senior Division), Zira, whereby the application filed by petitioner-defendant to summon Sh. R.S. Hundal, Retired Manager of Punjab & Sind Bank, Branch Makhu, has been dismissed.

Briefly, the facts of the case as made out in the present petition are that respondent-plaintiffs filed a suit for recovery of ₹ 74,114/- with interest. After issuing notice in the suit, written statement was filed by petitioner-defendant by raising various grounds. Respondent-plaintiffs examined PW-2 Balwinder Singh, Record Keeper, Punjab & Sind Bank, Branch Makhu, who stated that Exhibit P-25 i.e. Balance and Security Confirmation Letter was filled up by Sh. R.S. Hundal, Branch Manager,

Makhu and it was signed by the petitioner in his presence. Petitioner-defendant also examined his witnesses i.e. DW-1-Azadwinder Singh, DW-2-Varinder Singh, DW-3-Munish Kumar, Branch Manager of Punjab & Sind Bank. Thereafter, the petitioner filed an application to summon Sh. R.S. Hundal, Retired Manager, Punjab & Sind Bank, Makhu in connection with dispute regarding Exhibit 25. Reply to the application was filed. However, said application was dismissed vide order dated 7.3.2017 which is subject-matter of challenge in the present revision petition.

In reply to the application, an objection was raised that the present application was not maintainable as earlier applications filed by the petitioner-defendant had already been dismissed and the present application has been filed just to linger on the matter. Even the application for comparison of signatures of Sh. R.S. Hundal has also been dismissed.

Learned counsel for the petitioner submits that the summoning of Sh. R.S. Hundal, Retired Manager of the Bank, who filled up the form Exhibit P-25 is necessary to be examined. As per case of the petitioner-defendant, the dispute is regarding Exhibit P-25, which was filled up by Sh. R.S. Hundal, the then Branch Manager and for proving the document, summoning of said witness is necessary for just decision of the case.

Learned counsel for the petitioner further submits that application filed by the petitioner has wrongly been dismissed by relying upon the judgment passed in case **Behram Parkash @ Rohtash vs. Illaqa Magistrate, Gurgaon, (P&H) (DB) 1980 PLJ 651.** The trial Court has not considered the facts and circumstances of the case and without saying anything on the merits of the case, the same has been dismissed. No finding

has been recorded as to how the application was not maintainable. Learned counsel further submits that the petitioner would suffer irreparable loss in case said witness Sh. R.S. Hundal is not examined.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Facts relating to filing of suit, filing of written statement and thereafter moving of an application for summoning of witness Sh. R.S. Hundal to prove document Exhibit P-25 are not disputed. Said application has been dismissed on the following grounds:-

“I have heard both the learned counsel for the defendant and plaintiff and gone through the pleading and evidence brought on record. The plaintiff examined the branch Manager HP Singh as PW-1 and Balwinder Singh as PW-2. Both the witnesses were cross examined at length by learned counsel for the defendant. But no question was put to the witnesses regarding filling of Ex. P-25 by RS Hundal. Thereafter, when the evidence of plaintiff bank was closed and case was fixed for defendant evidence on 27.10.2016 and the defendants were directed to submit PF/DM and list of witnesses within 3 days, but on defendants moved application for summoning of concerned clerk of Punjab & Sind Bank Branch Makhu and he was summoned along with the record which was available with him and he was

examined as DW-3. In his chief examination as DW-3, all questions were put to him regarding the filling of Ex. P-25 and now the defendants again want to summon the present witness to prove the filling of Ex.P-25. Now, by filing the present application, it is clear that the defendants filed the present application only to linger on the present case. In view of the case law submitted by the learned counsel for the plaintiff, it is very much clear by the Hon'ble High Court that the witnesses cannot be summoned again and again for proving the documents already proved or exhibited. In the present case also the defendant only wants to procure the attendance of the bank official to harass him without any reasonable cause. Hence, the present application of the defendants to summon Sh. R.S. Hundal, the then Branch Manager, Punjab & Sind Bank, Branch Makhu, is dismissed with special cost of Rs.1,000/-”

On perusal of impugned order, it shows that the defendant moved an application for summoning of concerned clerk of Punjab & Sind Bank Branch, Makhu, who appeared before the Court along with record and was examined as DW-3. All questions were put to him regarding filling of Exhibit P-25 but the defendant still wanted to summon Sh. R.S. Hundal, the then Branch Manager of the Bank to prove filling of document Exhibit P-25. Nothing has been mentioned in the application nor in the arguments raised by learned counsel for the petitioner as to how summoning of said

witness is necessary. The Clerk of Punjab & Sind Bank along with record was summoned by the trial Court and he was examined at length while appearing as DW-3. Exhibit P-25 has already been proved on record, there is no necessity to summon said witness Sh. R.S. Hundal, the then Branch Manager, Makhu. Earlier also, an application for comparison of his signatures was filed which was dismissed. The document Exhibit P-25 has already been proved on record and the petitioner-defendant never pleaded in his written statement regarding filling of Exhibit P-25 by Sh. R.S. Hundal.

No doubt, order 18 Rule 17 CPC enables the Court, at any stage of suit, to recall any witness who has been examined and put such questions to him as it thinks fit. The power to recall any witness can be exercised by the Court either on its own motion or by moving of an application by either of the parties to the suit requesting the Court to exercise said power which is discretionary and is to be used sparingly in appropriate cases to enable the Court to clarify the doubts in evidence led by the parties but said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

In view of the above facts and circumstances and the law position as discussed above, I am of the view that the witness has been sought to be summoned for proving the document which has already been proved. No justifiable reason has been mentioned in the application as well as in the arguments as to how the summoning of Sh. R.S. Hundal, the then Branch Manager of the Bank is necessary when a witness along with record has already been examined and cross-examined.

No interference is required in the impugned order and as such, the revision petition being devoid of any merit is hereby dismissed.

April 21, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes