

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

CR No. 5054 of 2017(O&M)

Date of decision: 1.8.2017

Lakhwinder Singh

....Petitioner

VERSUS

Jagtar Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Munish Gupta, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 05.07.2017 (Annexure P-5) whereby application filed by the petitioner/defendant for amendment of written statement has been declined.

Jagtar Singh- respondent has filed a suit for recovery of Rs.4,68,480/- on the plea that petitioner/defendant borrowed an amount of Rs.3,00,000/- on the basis of pronote and receipt dated 17.03.2011 and agreed to pay interest at the rate of 1.56% per month but failed to return the amount despite repeated requests. The petitioner/defendant filed the written statement and, in turn, denied taking loan of Rs.3,00,000/- and having executed the pronote and receipt on 17.03.2011 with further averment that the pronote and receipt are forged and fabricated documents. The original written statement was filed on 15.04.2015 and the instant application for amendment of the written statement was filed on 20.03.2017 at the time when the case was fixed for evidence of the

petitioner/defendant, after respondent/plaintiff had already concluded his evidence.

Counsel for the petitioner has submitted that in case the proposed amendment is allowed, the petitioner would not pray for recalling witnesses of the respondent/plaintiff already examined in order to confront them with the facts sought to be added by way of amendment. It is further submitted that as onus to prove the facts sought to be added by way of amendment would be on the petitioner/defendant, no prejudice would be caused to the respondent/plaintiff in case the proposed amendment is allowed for adding certain facts reproduced in para 2 of the impugned order. The last submission made by counsel is that scope of amendment of written statement is much larger than that of a plaint, therefore, the application may be allowed.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Be that as it may, it is undisputed position of the case that the present application for amendment has been filed after commencement of trial and rather after the respondent/plaintiff had already concluded his evidence and the case is pending for recording evidence of the petitioner/defendant. The legislature, by way of amendment made in the year 2002, added proviso to Rule 17 of Order 6 of the Code of Civil Procedure, 1908, reads as follows:-

“17. Amendment of Pleadings.- The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, 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 trial.”

No doubt, the proviso may not create a complete bar against allowing an application for amendment filed after commencement of trial but in the case at hand, there is not even a whisper as to why the facts sought to be added by way of proposed amendment could not be pleaded in the original written statement. Perusal of the application would make it evident that the petitioner has sought to amend the written statement at the stage of his defence evidence on mere asking. In case such an application is allowed, it would be in flagrant violation of what has been envisaged in proviso appended to Rule 17 CPC. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed.

AUGUST 1, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no