

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

CR No.7681 of 2017

Date of Decision:20.11.2017

Sukhwinder Singh **.....Petitioner**

Vs.

Sushil Kumar and others **.....Respondents**

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

Present:- Mr. J.K. Singla, Advocate for the petitioner.

Mr. C.M. Munjal, Advocate for the respondents.

B.S. Walia, J.(Oral)

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 09.10.2017 passed by the learned Civil Judge (Senior Division), Phul whereby the evidence of defendant No.3, i.e. petitioner herein was closed by order of the Court.

2. Brief facts of the case leading to the filing of the revision petition are that the plaintiff/respondent No.1 filed a suit for recovery of ₹13,60,000/- i.e. ₹10 lakhs as principal amount and ₹3,60,000/- as interest against the defendant/petitioner and pro-forma respondents on the averments that Gurmail Singh son of Gurbachan Singh son of Anokh Singh resident of Bhagta Bhai Ka had taken loan amount of ₹10 lakhs from the plaintiff i.e. respondent No.1 herein on 29.10.2012 in the presence of witnesses Basant Singh son of Hakam Singh and Inderjit Singh nephew of Gurmail Singh whereupon Gurmail Singh had executed a pronote of ₹10 lakhs as security in favour of plaintiff/respondent No.1 on the same day; and affixed his thumb impression upon on the same. Gurmail Singh also got

prepared one receipt dated 29.10.2012 on account of having received an amount of ₹10 lakhs and put his thumb impression and witnesses also put their signatures upon the said receipt whereafter original pronote and receipt were handed over to the plaintiff. Despite requests, Gurmail Singh neither paid the principal amount nor paid the interest. Eventually, he died on 03.12.2010 whereupon the entire property of Gurmail Singh was inherited by the defendants, i.e. petitioner and proforma respondents as his legal heirs. However, despite requests by the plaintiff/ respondent No.1 to the defendant No.3/petitioner and proforma respondents to pay the principal amount along with interest, neither the principal amount nor interest was paid which lead to the institution of the civil suit.

3. Written statement was filed by defendant No.3, i.e. petitioner herein denying maintainability of suit and liability to make payment by stating that Gurmail Singh had never taken any amount from the plaintiff-respondent No.1 nor had agreed to repay the alleged amount along with interest nor had he prepared/ executed any pronote or receipt nor put his thumb impressions upon it and the same were forged and fabricated documents and in all probability, plaintiff had taken thumb impression of Gurmail Singh on blank papers at the time Gurmail Singh had sold his crop at the shop of the plaintiff.

4. After framing of issues, case was fixed for evidence of plaintiff/respondent No.1 who examined himself as PW1, Basant Singh as PW2, Anil Kumar Gupta, Finger and Handwriting expert as PW3, Dhana Singh as PW4 and tendered some documents as Ex.P1 to Ex.P.8, i.e. pronote, receipt and jamabandies for the year 2011-2012 and 2012-2013 and ultimately

closed his evidence on 21.08.2017. Learned counsel contends that plaintiff/respondent No.1 availed opportunity to lead and conclude the entire evidence on a number of dates, i.e. 14.07.2015, 02.09.2015, 07.10.2015 and 18.11.2015. whereafter innumerable other opportunities were also given for plaintiff's evidence but plaintiff's evidence could not be concluded.

5. Learned counsel for plaintiff-respondent No.1 contends that a perusal of the zimni orders reproduced at page Nos.5 to 10 of the paper book reveal that cross-examination of the plaintiff's witnesses was got deferred by the defendants, consequentially, it could not be said that the delay in the cross-examination of the plaintiff's witnesses was attributable to the plaintiff. On 21.08.2017, PW1 Sushil Kumar, PW3 Anil Kumar Gupta and PW4 Dhana Singh were cross-examined whereafter plaintiff Sushil Kumar tendered certain documents and closed his evidence in affirmative.

6. The matter was thereafter adjourned to 30.08.2017 for evidence of the defendant. On 30.08.2017, no DW was present whereafter the matter was adjourned to 06.09.2017, again no DW was present. The matter was adjourned to 15.09.2017 on which date DW1 Sukhwinder Singh and DW2 Inderjit Singh were present and their examination-in-chief was conducted and their cross-examination was deferred on request of learned counsel for the plaintiff. Accordingly, the case was deferred to 26.09.2017 for evidence of the defendant and witnesses were bound down for the said date. On the next date, i.e. 26.08.2017, DW1 and DW2 were present but could not be cross-examined as advocates were on strike whereupon they were bound down for 09.10.2017 for cross-examination and for remaining evidence of the defendant. After cross-examination of DW1 and DW2 on account of

non-availability of any other DW, the trial Court refused to adjourn the case for further evidence of the defendants and closed the same by order after taking into account that the defendant had already availed numerous opportunities and the case was falling in the category of action plan.

7. In the afore-mentioned background, the sole argument of learned counsel for defendant No.3, i.e. petitioner herein is that order dated 09.10.2017 passed by the learned Additional Civil Judge (Senior Division), Phul closing the evidence of defendant No.3, i.e. petitioner herein was legally unsustainable since the petitioner only wanted to examine one Vicky Singla, ie.. Accountant of respondent No.1, i.e. the plaintiff who had not come forward despite having been served with summons from the Court pursuant to order dated 06.09.2017.

8. Learned counsel states that on failure of Vicky Singla, ie.. Accountant of the plaintiff to comply with the summons of the Court served on him vide order dated 06.09.2017, evidence of defendant No.3, i.e. petitioner herein could not have been closed, instead action was required to be taken in terms of Order 16 Rule 10 of the CPC. Learned counsel states that in the circumstances, it was incumbent upon the Court to compel the presence of the Accountant of the plaintiff/ respondent No.1 on his failure to comply with the summons. Issuance of summons and service thereof on Vicky Singla have not been disputed by learned counsel for the respondents.

9. In the circumstances as have been noted above, particularly Order 16 Rule 10 of the CPC and the failure of Vicky Singla, Accountant of the plaintiff to comply with the summons of the Court served on him vide

order dated 06.09.2017, it was incumbent on the learned trial Court to have ensured his presence by resorting to the provisions of Order 16 Rule 10 of the CPC. The submission of learned counsel for the petitioner that the impugned order ought not to have been passed merits acceptance. Accordingly, order dated 09.10.2017 passed by the learned Additional Civil Judge (Senior Division), Phul closing the evidence of defendant No.3, i.e. petitioner herein is set aside. Learned trial Court shall provide one effective opportunity to defendant No.3 i.e. petitioner herein to conclude evidence. by taking will take steps to ensure presence of witness Vicky Singla as early as possible. Defendant No.3 i.e. the petitioner herein shall conclude his evidence on the date of appearance of said Vicky Singla. No further opportunity shall be granted except the date on which said Vicky Singla puts in appearance. Revision petition stands disposed of with aforementioned directions.

November 20, 2017**renu****(B.S. WALIA)****JUDGE**

1. Whether Speaking/ Non Speaking? Yes
2. Whether reportable? Yes