

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

Date of decision: 13.07.2017

CR No.8263 of 2015

Santokh Singh

...Petitioner

Vs.

Avtar Singh & another

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.S.Dhandi, Advocate, for the petitioner.

Mr. V.P.S.Mithewal, Advocate, for

Mr. Bhaskar Sharma, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

This is a revision petition filed under Section 227 of the Constitution assailing the order dated 09.09.2015 (Annex P-7) passed by the Additional Civil Judge (Senior Division), Samrala dismissing the plaintiff's application under Order 6 Rule 17 of the CPC.

The recovery suit was filed against Avtar Singh son of Hukam Singh describing him as the sole proprietor of Mithewal Traders, Commission Agents, Anaz Mandi, Machhiwara, Tehsil Samrala, District Ludhiana.

The suit was contested by Avtar Singh, who denied the claim for recovery of ₹24,55,469/- as claimed by the plaintiff. In his written statement, Avtar Singh averred that he was not the sole proprietor of the firm and in fact it was his son Darshan Singh, who is in charge of business of the sole proprietorship firm. In Para.2 of the Preliminary Submissions contained in the written statement, Avtar Singh has averred that the present suit was

filed to counter the suit for recovery of ₹26,00,000/- from the plaintiff and his son Surjit Singh. The present litigation was alleged to have been a counterblast.

After framing of issues by the trial Court arising from the pleadings of the parties on 18.05.2009, the plaintiff moved an application under Order 1 Rule 10 read with Section 151 CPC for impleading Darshan Singh son of Avtar Singh as party - defendant 2, which was allowed on 05.03.2013. Thereafter, issues were re-cast on 03.07.2014 specifically for the reason that defendant 2 had filed written statement after impleadment. At this stage, plaintiff moved an application to file fresh affidavit in his evidence. However, such application was dismissed on 10.04.2015 for the reason that in the absence of amendment of the suit, the prayer could not be allowed. Since plaintiff-petitioner suffered a statement on 15.02.2011 for concluding his entire evidence, the suit was adjourned to 05.05.2015 for recording the entire evidence of the plaintiff including his cross-examination. Thereafter, the plaintiff as a last ditch measure filed an application under Order 6 Rule 17 CPC to amend the plaint taking a cue from the observations made in the order of the trial Court dismissing the application to file fresh affidavit in evidence. By this amendment, the plaintiff wishes to substitute Avar Singh for his son Darshan Singh.

To understand the repercussions of such amendment, a few necessary dates may be necessary to note.

The plaintiff is an agriculturist while defendant is a Commission Agent. As per the plaint, the last transaction between the parties was made on 26.10.2006. The suit against Avtar Singh was brought in the year 2008. However, application under Order 6 Rule 17 was presented on

05.05.2015. If the application was allowed, Avtar Singh would no longer be the defendant and in his place his son Darshan Singh would be. Darshan Singh – defendant 2 filed his written statement after the application under Order 1 Rule 10 CPC was allowed on 05.03.2013 in which he has denied the averments made in the plaint. If this was allowed to happen, then the plaintiff would be given a fresh lease of life to claim the amount of ₹24,55,469/- against Darshan Singh, when such a claim for recovery of money would be time barred.

It may be noted that application under Order 1 Rule 10 CPC was filed after framing of issues on 18.05.2009. However, after addition of Darshan Singh as defendant 2, issues were re-framed on 03.07.2014. The learned trial Court has kept all these facts in view and observed that the plaintiff was well aware about the entire factual matrix of the case and had ample opportunity to raise these aspects when the issues were framed in the year 2009 by taking steps. The trial Court has rightly observed that it is highly improbable to believe coming from a prudent person like plaintiff that he feign knowledge as to whom he was selling his crops.

Mr. Dhandi submits that the plaintiff filed the suit against Avtar Singh because Avtar Singh used to sit in the front office of the Commission Agency and he assumed he was the right person to sue. This was not a prudent act and one such the Court will easily believe since agriculturists who sell their crops on credit by taking loan from *Ahartias* belonging to the same area would not know each other very enough to do business.

The trial Court has appropriately declined the application on two counts. One, that it would change the nature of the suit and the claim would run afoul of the Limitation Act, which time when begins to run,

nothing stops. The trial Court has observed; and not wrongly, that the law of estoppel would also apply to the decision on the application. The application has been dismissed without prejudice on merits as against Avtar Singh. The factum of introduction of Darshan Singh as party will be a matter of discussion on the evidence at the end of the trial when final judgment is passed by the trial Court.

Consequently, I have no cogent reason to interfere in the well reasoned order of the trial Court and would dismiss the revision petition.

It is ordered accordingly.

13.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*