

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

CR No.267 of 2018

Date of decision: 17th January, 2018

M/s Bhangu Trading Company & another

... Petitioners

Versus

Satvir Singh & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Pankaj Bali, Advocate for the petitioners.

FATEH DEEP SINGH, J.

Present respondent Satvir Singh had initially filed a suit for recovery seeking to recover principal amount of Rs.3,00,000.00 and interest @ 1.50% per annum with effect from 26.02.2009 amounting to Rs.1,59,000.00, total Rs.4,59,300.00. The precise grounds in the suit were to the effect that the present petitioner No.1 was a partnership firm being run and looked after by petitioner No.2 Amarjit Singh Bhangu alleging that the parties belonged to the same village whereas Satvir Singh carries on agricultural pursuits and through their interaction, petitioner No.2 on behalf of petitioner No.1 has borrowed a sum of Rs.3.00 lacs, Rs.2.80 lacs through demand draft and Rs.20,000/- in cash in the year 2003. Consequently, a cheque in acknowledgement of outstanding amount was issued by the present petitioners in favour of respondent, but the same was dishonoured on account of insufficiency of funds and after due recourse the plaintiff filed the suit in question as well

as criminal complaint under the relevant provisions of law. During the course of civil trial, the defendant (present petitioner) in his written statement took a stand that the plaintiff had materially concealed the true facts and denied any relationship between the two and also denied that any loan amount was taken from the plaintiff and even denied that defendant ever issued any cheque as alleged by the plaintiff.

It was during the trial, the plaintiff moved an application for additional evidence to examine the concerned Clerk of State Bank of Patiala (now merged and termed as State Bank of India) along with statement of accounts of the defendant for the concerned period and record pertaining to issuance of demand draft by the plaintiff in favour of defendant. The precise grounds that were taken up, were that at the time of examination of evidence of the plaintiff, he could not examine the bank official due to inadvertence and thus, the prayer in question.

In reply to the application, defendant took a stand that the evidence of the plaintiff and the defendant has been closed and at this belated stage of arguments, such a relief cannot be extended to the applicant. It is through the impugned order dated 07.11.2017 (Annexure P5) the Court of learned Civil Judge (Junior Division), Khanna allowed the application subject to costs. Aggrieved over this very order, the defendant (now petitioner) has come up before this Court challenging the same in this revision petition by resort to the provisions of Section 115 CPC read with Article 227 of the Constitution of India.

Heard Mr. Pankaj Bali, Advocate for the petitioners and perused the records.

The stand of the plaintiff Satvir Singh in his plaint, where he has categorically stated in paragraph No.2 that defendant No.2 borrowed a sum of Rs.3.00 lacs i.e. Rs.2.80 lacs through demand draft and Rs.20,000/- in cash from the plaintiff as a loan in the year 2003 and it is not something which is sought to be introduced through this prayer of additional evidence at a belated stage and it is the stand of the defendant/petitioner that no such payment was ever made and therefore a moot and contentious issue has arisen as to whether such a payment was made or not and which is a rallying point to decide the issues between the two sides.

Though with the amendment of Code of Civil Procedure through Act No.46 of 1999 with effect from 01.07.2002, provisions of Order XVIII Rule 17A CPC have been deleted and done away with, however, that does not mean that by this deletion the evidence cannot be received at all after a party closes his evidence. More so, in the dispensation of justice where it is utmost necessitated and appropriate, the Court can exercise its inherent powers to meet the ends of justice and allow such a recourse when the Court is satisfied that such a relief is not being sought for by way of malice to unduly prolong the proceedings and where in the ends of justice such a new evidence is necessary for the Court to come to a judicious decision, for which reliance is sought to be placed on '**K.K. Velusamy v. N.Palanisamy**' 2011(2) RCR (Civil) 875.

The impugned order bears out that the Court below was of the opinion that the plaintiff was aware of such a stand and there are specific pleadings in his plaint about the payment through draft as well as cash and there is a case of over-sightedness by the counsel and in view of the settled proposition of law that a party should not be allowed to suffer by negligence of his counsel, it has been rightly observed in the impugned order that it is duty of the courts to unearth the truth and thus, the Court has been of the view that such an evidence was necessary and proper to impart justice to the parties. More so, no prejudice was to be caused to the other side when the evidence so sought to be adduced forms part of the bank record from a public authority beyond any suspicion. The impugned order certainly is correct appreciation and in furtherance of justice. The revision petition, being hopelessly without any iota of merit, stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

January 17, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No