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

**Civil Revision No.3448 of 2018
Date of Decision: 04.07.2018**

HARDIP SINGH BHOGAL

.....Petitioner

Vs

DR. DINESH CHANDER AND ANOTHER

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Naveen Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the orders dated 11.04.2018 and 18.04.2018 passed by the Civil Judge (Jr. Divn.) Phillaur whereby prayer for deferring the proceedings and for summoning the witness of the Bank to prove factum of deposit of cheques in the account with statement of account of plaintiff/respondent No.2 was declined.

[2]. As per office report, respondents No.1 and 2 have been duly served. However there is no representation on their behalf.

[3]. Brief facts are that plaintiffs filed a suit for specific performance on the basis of agreement to sell dated

23.03.2011. In alternative, suit for recovery of Rs.9 lakhs being double of the earnest money and permanent injunction restraining the defendants from creating any encumbrance over the suit property was filed.

[4]. DW-5 Mandeep Singh appeared on 11.04.2018 and stated that he had brought the summoned record pertaining to the account of plaintiff No.1/Dr. Dinesh Chander and Kamala Chamoli. Two cheques were deposited in the account of plaintiff No.1. Out of six cheques initially handed over to the plaintiffs, two cheques were returned to the defendant.

[5]. From the statement of DW-5 Mandeep Singh, petitioner came to know that remaining two cheques were deposited in the account of plaintiff No.2 Ajay Matta in a sum of Rs.8,000/- each. The cheques were returned due to insufficiency of funds on 09.01.2012.

[6]. Precisely for proving the aforesaid fact, the petitioner sought to summon the concerned official from the Bank so as to prove the factum of deposit of two cheques in the account of plaintiff No.2/ Ajay Matta. Appropriate application was filed for summoning of witness from Punjab National Bank, Goraya along with account record of plaintiff No.2/Ajay Matta for the period from 01.01.2012 to 31.03.2012. The prayer of the

petitioner was declined on the ground that similar prayer was made during cross-examination of DW-5 Mandeep Singh i.e. Clerk of Punjab National Bank, Goraya, who was examined on 11.04.2018. The prayer was not entertained on the ground of number of opportunities availed by the petitioner.

[7]. Perusal of record would show that the factum of deposit of two cheques in the account of plaintiff No.2/Ajay Matta came to be known to the petitioner only on 11.04.2018 when DW-5 Mandeep Singh was examined, who stated that account No.01033479 belongs to Ajay Matta and two cheques of Bank of Baroda in a sum of Rs.8000/- each were deposited in the said account.

[8]. In view of examination-in-chief of the said witness and disclosure of aforesaid fact, the earlier attempt made by the petitioner on 28.10.2017 is of no consequence. The case is fixed for evidence of the defendant since 16.10.2017. Since, the factum of deposit of cheques came to be known to the petitioner only on 11.04.2018, therefore, the ground on which the prayer has been rejected in my considered opinion is not justified.

[9]. Consequently, the impugned orders dated 11.04.2018 and 18.04.2018 passed by the Civil Judge (Jr. Divn.) Phillaur are set aside. This revision petition is allowed. The application

for summoning of witness/concerned Clerk from Punjab National Bank, Goraya along with account record pertaining to account No.01033479 in the name of Ajay Matta for the period from 01.01.2012 to 31.03.2012 is allowed. Normal consequences to follow.

July 04, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No