# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**221** **CR-5970-2015**

**Date of Decision:15.01.2018**

**The Moga Central Co-operative Bank Limited .....Petitioner**

**Versus**

**United India Assurance Company Limited .....Respondent**

**CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.**

**Present: Mr. S.K. Singla, Advocate, for the petitioner.**

**Mr. Gopal Mittal, Advocate, for the respondent.**

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**HARI PAL VERMA, J.(Oral)**

Petitioner-The Moga Central Co-operative Bank Limited (for short "the petitioner-Bank") has filed the present revision petition under Article 227 of the Constitution of India, impugning the order dated 17.08.2015 (Annexure P-1) passed by the learned Civil Judge (Senior Division) Moga, whereby in a suit for recovery, application filed by the petitioner-Bank under Section 151 CPC seeking permission to furnish evidence/affidavit in the suit and to allow the substitution/replacement of the evidence already led in the case, has been dismissed.

Learned counsel for the petitioner has argued that since there were dacoity in two different branches of the petitioner-Bank and the respondent-Insurance Company has not accepted the claim of the Bank, the petitioner-Bank has filed two separate suits for recovery against the

Insurance Company. In the present case, suit is for recovery of ₹7,26,350/-. The petitioner-Bank has examined one witness, namely, Tarsem Kumar, PW-1 on 15.02.2012. The petitioner-Bank has filed two separate suits for recovery which were registered at serial Nos.261 of 7/2009 and No.262 of 7/2009. The suit which was for recovery of ₹12,95,195/- was dismissed in default on 27.02.2013. At that time, clerk of the Bank noted as if it was the civil suit filed for recovery of ₹7,26,350/- which was dismissed in default, whereas suit for recovery of ₹12,95,195/- was dismissed on that date. It has come to the notice of the counsel for the plaintiff-Bank that the evidence which was required to be led in the recovery suit of ₹12,95,195/- was led in the other suit and therefore, a necessity has arisen for the Bank to move this application.

Learned counsel for the respondent has argued that the suit was dismissed in default on 27.02.2013, whereas the present application was filed on 21.08.2013 and the case was pending since 2009. Therefore, the plaintiff does not have any right to lead evidence in the present case.

I have heard learned counsel for the parties.

The dispute between the parties is that two different suits were filed by the plaintiff-Bank as there were common defendants in these suits. It is only because of an inadvertent mistake that the evidence of the other suit, which was already dismissed in default was adduced in the present case. There is a justified reason with the petitioner-Bank and such inadvertent mistake does occur.

Accordingly, the petitioner-Bank is permitted to substitute evidence in the present case. The order dated 17.08.2015 is hereby quashed. However, it is made clear that under the garb of this order, the petitioner shall not delay the trial in any manner.

The Insurance Company shall be well within its right to agitate the plea of the interest for the period from 2015 to 2017, when the suit remained pending without any fault on the part of the Insurance Company.

The present revision petition is disposed of accordingly.

January 15, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No