

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

**CR No.6170 of 2016 (O&M)
Date of decision : April 23, 2018**

Darshan Lal

..... Petitioner

Versus

Nishan Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kulbhushan Soi, Advocate for the petitioner.

Mr. N.K. Manchanda, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 05.08.2016 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Ferozepur, vide which an application filed by the defendant-petitioner under Order VI, Rule 17 CPC, 1908, for permission to amend the written statement and drop the proceedings against him, was dismissed.

Heard.

It comes out that the suit for recovery of ₹99,900/- was filed against the present petitioner-defendant on 19.04.2012. Thereafter, written statement was filed and issues were framed and when the two witnesses of the plaintiff-respondent were examined, the present application was filed that there is another person in the locality of the same name and same father's name. Therefore, defendant-petitioner should be allowed to amend the written statement and proceedings should be dropped against him.

I am of the view that in a regular civil suit for recovery, there is no procedure to drop the suit when the evidence of the plaintiff has already begun. It has to be decided on merits. If the defendant-petitioner states that he is not the person, who is liable to pay the recovery amount, he is always at liberty to lead evidence to that effect even without a plea. The primary burden is on the plaintiff-respondent to prove that the defendant-petitioner is the same person, against whom he has right to recover the said money on the basis of pronote and receipt.

It is a case based on pronote and receipt and primary burden is on the plaintiff-respondent to prove that the defendant-petitioner had signed/thumb marked the pronote and receipt.

If the defendant-petitioner had not signed the pronote and receipt, the plaintiff-respondent will be unable to prove his signatures on the pronote and receipt. It being so, there is no illegality or infirmity in the impugned order. The amendment in the written statement was sought after four years of the filing of the suit, at the stage when the evidence of the plaintiff-respondent has already begun. There is no ground to interfere in the impugned order.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

April 23, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No