209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-916-2013 (O&M)
Date of decision : 17.04.2018

Bank of India

... Petitioner(s)

Versus

M/s Puri Enterprises and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Anand, Advocate
for the petitioner.

Mr. V.K. Sandhir, Advocate
for respondent Nos.1 to 4.

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AMIT RAWAL, J. (ORAL)

The petitioner/plaintiff-Bank is aggrieved of the impugned order dated 19.11.2012, whereby an application seeking amendment of the plaint for incorporating the following averments, has been dismissed:-

i) That defendant No.2 along with Mr. Raman Kumar being partners of defendant No.1 approached the plaintiff bank as its Golden Temple Road, Branch in the month of August 1996 for availing cash credit facility to the tune of ₹ Two Lacs in the name of their firm defendant No.1. The said request was also joined by defendants No.4 and 5 at that time who assured to stood as guarantors for repayment of said facility.

ii) That in para No.5 instead of defendants No.2 and 3, it should *be allowed to be changed as defendant no.2 along with Mr. Raman Kumar.*

iii) *In para No.11, the word "all the defendants" be allowed to be substituted that "defendant No.2 along with Mr. Raman Kumar as well as defendants No.4 and 5" executed acknowledgment of debt L444C dated 4.1.1999.*

iv) *In para No.12, it should be allowed to be substituted in place of the word 'defendant no.2 and 3 being partners of defendant no.1 'that on a/c of change in partnership, Mr. Raman Kumar retired from partnership of defendant No.1 and Smt. Kiran Puri i.e. defendant no.3 was taken as new partner and as such the said two partners i.e. defendants No.2 and 3 of defendant no.1."*

Learned counsel for the petitioner submitted that the aforementioned amendment was necessary and essential, for, the defendant-firm was reconstituted and Kiran Puri had jointed as a new partner and additional loan facility and security documents were given, which came to the knowledge of the plaintiff only on 11.06.2012, therefore, the application for amendment was moved. The trial Court had declined the application on the premise that it was an attempt to delay the proceedings without noticing the fact that the Bank is recovering the amount from the defendants. It would be in the interest of the parties to allow the amendment, thus, urges this Court for setting aside the impugned order, under challenge.

Learned counsel for respondent Nos.1 to 4 submitted that the Bank cannot be permitted to cause amendment, for, the plaint is always filed on the basis of the availability of the record. The extension of loan facility in the year 2000, allegedly acquiring the knowledge in the year 2012, cannot be permitted to be incorporated as it would be hit by law of limitation. The amendment cannot be permitted to relate back to the filing of the suit as a valuable right had accrued in favour of the defendants and rightly so, the application has been dismissed. The loan facility as per the averments made in the plaint was for the first time extended in the year 2000, whereas the suit was filed in the year 2007, thus, urges this Court for dismissal of the present revision petition by upholding the impugned order, under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the parameters for allowing the amendment of the plaint and written statement are different. The Court should have kept the question of limitation open as the suit of the plaintiff-Bank is always based upon the documents having the acknowledgement. It would be the domain of the Court to see whether the amendment sought in the year 2012 in a suit filed in 2007 or would relate back to the filing of the suit or not, but the fact of the matter is that the assertion in the application for amendment of extending loan in the year 2000 was required to be incorporated as the Bank would have faced the objection at final stage of the suit. The application was moved at the stage of plaintiff's evidence, therefore, no harm and prejudice would be caused with the objection of limitation kept open.

As an upshot of my observations, the impugned order dated 19.11.2012 is not sustainable in the eyes of law and the same is hereby set aside, subject to the payment of the costs of ₹10,000/-, which shall be condition precedent.

It is made clear that the question of limitation, as indicated above, is kept open to be decided at the final stage.

Resultantly, the present revision petition stands allowed.

(AMIT RAWAL)
JUDGE

17.04.2018
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**

✓
Whether Reportable **Yes/ No**