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

**Civil Revision No.4298 of 2016 (O&M)
Date of Decision: 22.11.2019**

Blue Stallion Equipments Pvt. Ltd

.....Petitioner

Vs

Kehar Singh

....Respondent

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

Present: Mr. Shimon Bhatia, Advocate for
Mr. Nitin Kant Setia, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 22.04.2016 passed by the District Judge, Ludhiana, vide which the application for amendment of the plaint at the appellate stage was dismissed.

[2]. Learned counsel for the petitioner submitted that the audited account statements were already on record of the trial Court. Petitioner constructed a poly house for the respondent for which the petitioner had incurred an amount of Rs.8,79,000/. Two Bill Nos.347 and 489 in the sum of Rs.7,00,000/- and

Rs.1,79,900/- respectively were issued. Those bills were duly shown in the audited account statements. Inadvertently, Bill No.489 could not be produced on record and the trial Court dismissed the application by observing that the amount of Rs.7,00,000/- has already been paid to the plaintiff and, therefore, nothing was due. The suit is in respect of recovery of amount of Rs.1,79,900/-.

[3]. It appears from the record that the plaintiff seeks to plead that the amount of Bill No.489 dated 30.03.2010 amounting to Rs.1,79,900/- in respect of installation of net house structure is also standing due against the defendant and the said entry is also shown in the account statement (Ex.P-10). The suit was filed by the plaintiff for recovery of Rs.1,89,000/- i.e. Rs.1,75,000/- being arrears of bill and Rs.14,000/- being interest @ 8% per annum from 01.09.2010 to 31.08.2011.

[4]. Plaintiff has specifically pleaded that he had issued bill of Rs.7,00,000/- to the defendant on 31.08.2009 after completion of entire work. No transaction took place after 31.03.2009 between the parties. Total costs of installation of high tech poly house was Rs.7,00,000/-. Therefore, there was no occasion for the plaintiff to issue separate Bill No.489 dated 30.03.2010 in a sum of Rs.1,79,900/- in respect of net house structure. Otherwise, the plaintiff was in knowledge of the

aforesaid Bill No.489 dated 30.03.2010 at the time of filing of the suit on 24.08.2011.

[5]. The pleadings are silent with regard to the aforesaid aspect. Even in cross-examination of the plaintiff during trial, no such issue has come up. The suit was dismissed by the trial Court on 29.07.2013. No such foundation has been led before the trial Court and the plaintiff invited the judgment from the trial Court against it. Bill Ex.P-5 dated 31.03.2009 had already been paid by the respondent to the plaintiff. The dispute is only in respect of Rs.1,79,900/- relating to Bill No.489 dated 30.03.2010, which was never included in the cause of action for filing the present suit in question. If at all, the plaintiff has any cause of action in respect of aforesaid bill, he can file independent suit subject to limitation.

[6]. The application for amendment of the plaint has been filed during pendency of the appeal on 18.11.2013 to incorporate the plea of Bill No.489 dated 30.03.2010. Evidently, the said plea has been raised after three years of issuance of the aforesaid bill. The proposed amendment cannot be allowed being time barred.

[7]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned order passed by the

trial Court, dismissing the application for amendment. No exception can be made out in view of facts on record. This revision petition is accordingly dismissed.

November 22, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No