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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4632 of 2017
Date of Decision:27.02.2019

Naresh Kumar

......Petitioner

Vs

Sat Pal and others

....Respondents

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

Present: Mr. Sapan Dhir, Advocate
for the petitioner.

Mr. Siddharth Gupta, Advocate and
Mr. Sanjeev Gupta, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 22.05.2017 passed by the Civil Judge (Jr. Divn.) Dhuri, vide which the application filed by the defendants/ respondents under Order 12 Rule 8 CPC for production of documents was allowed.

[2]. Plaintiff filed a suit for recovery in his personal capacity. Plaintiff alleged that he was doing the business of commission agent in New Anaj Mandi, Dhuri and was the sole proprietor of M/s Sat Pal Naresh Kumar. Balbir Singh (since deceased) had

borrowed a sum of Rs.70,000/- from the plaintiff concern on 15.05.2015 and executed a pronote and receipt in favour of the plaintiff concern. Balbir Singh also borrowed a sum of Rs.20,000/- from the plaintiff concern on 12.06.2015 and also executed a pronote and receipt in favour of the plaintiff. Balbir Singh had died leaving behind the defendants as his legal heirs, who have inherited the estate of Balbir Singh. In the written statement filed by the defendants, following legal objections have been taken in para Nos.1 and 4:-

> *"1. That the alleged pronotes and receipts alleged to be of dated 15.5.2015 and 12.6.2015 are forged and fabricated documents and without consideration, therefore the suit of the plaintiff is liable to be dismissed.*
>
> *4. That the father of the defendants No.1 to 3 and husband of defendant No.4 was cultivating some land and plaintiff is running a commission agency under the name and style of M/s Satpal Naresh Kumar at New Anaj Dhuri. Balbir Singh since deceased had been selling his crop through the commission agency of the plaintiff as plaintiff is running the business of commission agent. The plaintiff was not paying due price of the crop to Balbir Singh and evading full payment of the price of crop, the Balbir Singh stopped selling his crop to the firm of the plaintiff in the year 2010 and squared off his account, therefore Balbir Singh since deceased never visited the shop of said firm of the plaintiff since the last 6 years nor had any occasion to meet plaintiff as after stopping selling the*

produce to the plaintiff Balbir Singh had started selling his crop to another commission agent. When Balbir Singh since deceased was selling the crop to the firm of plaintiff, the plaintiff might have deceptively obtained his signature on blank printed Pronotes and receipts on the pretext of crediting agricultural produce sold by the Balbir Singh to him. Balbir Singh being a rustic and illiterate person and not conversant with the procedural wriggles, was duped and the plaintiff in connivance with alleged witness fabricated the pronotes and receipts. The Balbir Singh was never in need of such huge money. Balbir Singh had sound financial position. Balbir Singh even did not obtained loan from any Bank. Balbir Singh had no business or other terms with plaintiff nor had any dealing the plaintiff since 2010. There was no occasion for the plaintiff to advance the alleged loan."

[3]. Para No.3 on merits of the written statement filed by the defendants reads as under:-

"3. That Para No.3 of the plaint is wrong and hence denied. It is incorrect that the Balbir Singh since deceased borrowed a sum of Rs.20,000/- from the plaintiff on 12.06.2015 with a stipulation to pay interest @ 1.25% P.M. It is also incorrect that Balbir Singh executed any pronote and receipt in favour of the plaintiff concern. It is also incorrect that Balbir Singh signed the alleged pronote and receipt after admitting to be true and correct. It is also incorrect that Balbir Singh made any endorsement on the receipt pronote regarding receipt of Rs.20,000/- and signed the same. The alleged witnesses are the party men of the plaintiff. Balbir Singh never borrowed the huge amount from the plaintiff nor executed a pronote and receipt

alleged to be dated 12.6.2015. The alleged pronote is forged and fabricated document and is without consideration.

The true facts are that the father of the defendants No.1 to 3 and husband of defendant No.4 was cultivating some land and plaintiff is running a commission agency under the name and style of M/s Satpal Naresh Kumar at New Anaj Dhuri. Balbir Singh since deceased had been selling his crop through the commission agency of the plaintiff as plaintiff is running the business of commission agent. The plaintiff was not paying due price of the crop to Balbir Singh and evading full payment of the price of crop, the Balbir Singh stopped selling his crop to the firm of the plaintiff in year 2010 and squared off his account, therefore Balbir Singh since deceased never visited the shop of said firm of the plaintiff since the last 6 years nor had any occasion to meet plaintiff as after stopping selling the produce to the plaintiff Balbir Singh had started selling his crop to another commission agent. When Balbir Singh since deceased was selling the crop to the firm of plaintiff, the plaintiff might have deceptively obtained his signature on blank printed Pronotes and receipts on the pretext of crediting agricultural produce sold by the Balbir Singh to him. Balbir Singh being a rustic and illiterate person and not conversant with the procedural wriggles, was duped and the plaintiff in connivance with alleged witness fabricated the pronotes and receipts. The Balbir Singh was never in need of such huge money. Balbir Singh had sound financial position. Balbir Singh even did not obtained loan from any Bank. Balbir Singh had no businesses or other terms with the plaintiff nor had any dealing the plaintiff since 2010. There was no occasion for the plaintiff to advance the *alleged loan."*

[4]. Perusal of the legal objections No.1 and 4 would show that both are somewhat contradictory to each other. Pronote and receipts dated 15.05.2015 and 12.06.2015 are claimed to be forged, fabricated and without consideration at the first instance. At the same time, in legal objection No.4, submission to the contrary have been made, thereby diluting the rigor of allegations forming subject matter of legal objection No.1.

[5]. In the application under Order 12 Rule 8 CPC, the defendants prayed for production of following documents:-

> *(i) The account books maintained by the plaintiff individually and firm M/s Sat Pal Naresh Kumar, with effect from 2010 to till date;*
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> *(ii) The returns of income tax for the financial year 2010-2011 to 2015-2016 of the firm and individual of the plaintiff alongwith computation sheets;*
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> *(iii) Returns filed by the plaintiff as HUF with effect from 2010-2011 to 2015-2016;*
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> *(iv) PAN number issued by the department of Income Tax as individual and for Firm and HUF;*
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> *(v) List of the debtors of the plaintiff with amount due respectively w.e.f. 2010 to 2015;*
>
> *(vi) The list of civil suits for recovery filed by the plaintiff from Year 2010 to till date;*
>
> *(vii) The list of Partners of M/s Sat Pal Naresh Kumar concern.*

[6]. In the context of controversy, relevancy of documents have to be alleged by the defendants. In para No.3 of the reply to the application under Order 12 Rule 8 CPC, the petitioner has submitted in the following manner:-

> *"3. That the Para No.3 of the application is wrong and denied. It is incorrect that the documents mentioned in the heading of the application are essential to be got produce to prove the claim of the deft. The case is fixed for the evidence of the plaintiff. As such the deft, has not right to move such application at this stage. Moreover, the plaintiff have filed the suit on basis of Pronotes and receipts dated 15/5/2015 and 12/6/2015. It has mentioned in the plaint that Naresh Kumar is the prop. of the M/s Satpal Naresh Kumar and Deft. is claiming documents from the years 2010 on wards and the name of partners of said concern. It is clear from the application itself that the same has been filed just to complicate and prolong the matter."*

[7]. Since the suit has been filed in individual capacity, question of partnership firm and the documents arising therefrom, whether would satisfy the requirement of production of documents under Order 12 Rule 8 CPC has to be seen. It is a settled principle of law that before giving direction to a party to discover and produce a document, the Court has to be satisfied in respect of relevancy of the documents to be produced for proper adjudication of the case. The privilege conferred under Order 11 Rule 12 and 14 CPC cannot be used for conducting a roving/fishing enquiry in respect of relevancy of the document. The production of documents can only be asked if the same are relevant for just decision of the case. If discovery is found to be unnecessary, no indulgence can be granted by the Court. The

documents must be relatable to the issue involved between the parties.

[8]. Para No.3 of the application under Order 12 Rule 8 CPC and corresponding reply by the petitioner would show that the documents cannot be considered to be relatable to the controversy as the same would further entail in undertaking roving inquiry in detail so as to extract far fetched relief. The process of the Court cannot be utilized to establish such documents on record. The Court is required to apply its mind carefully before making an order and for granting discovery and inspection. No such order can be passed in a routine manner as the same would lead to serious consequence. The discretion must be exercised in a judicious manner so as to prevent ulterior motive by any of the party. Nature of the documents are such which may be used to prejudice even without diluting upon relevancy in the present context.

[9]. In view of ratio laid down in ***Punj Star Industries Private Limited vs. Atna Investment Private Limited, 2001(5) AD (Delhi) 1029***, no roving inquiry can be ordered under the aforesaid provision. Relevancy and connectivity of the documents with the controversy are the relevant features which are *sine qua non* before granting indulgence in the said context. The reference can be made to ***Oriental Bank of Commerce***

vs. M/s Ginni Plastic Industries & Ors, 2009(17) R.C.R. (Civil) 319; ***The Tata Iron and Steel Co. Ltd. and others vs. Prop. Ajit Cotton Ginning Pressing Dall and Steel Rolling Mills, 2013(1) R.C.R. (Civil) 506*** and ***Ms. Monica Bibli Sood vs. Dr. Karan J. Kumar and others, 2005(2) R.C.R. (Civil) 455*** The expediency and relevancy of the documents have to be examined by the Court in a judicious manner before resorting to the provision. No roving inquiry for fishing out evidence can be resorted to. The case is already reached to the stage of defendants evidence. In my considered opinion, the indulgence granted by the trial Court is wholly unsustainable.

[10]. In view of above, the impugned order dated 22.05.2017 passed by the Civil Judge (Jr. Divn.) Dhuri is found to be not sustainable in the eyes of law. Consequently, the impugned order is set aside. This revision petition is accordingly allowed. Normal consequences to follow.

February 27, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No