

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

CR-5385-2019(O&M)

Date of decision:-5.9.2019

Jagjit Singh Gill

...Petitioner

Versus

Karan Aggarwal

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjiv Gupta, Advocate with
Mr.Vaibhav Sehgal, Advocate
for the petitioner.

Mr.Aayush Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Under challenge in this revision petition is order dated 27.8.2019 passed by Civil Judge(Jr.Divn.), Ludhiana vide which application for additional evidence filed by defendant Jagjit Singh Gill to place on record documents of revenue record had been dismissed.

Briefly stated, facts of the case are that plaintiff Karan Aggarwal had filed a suit for recovery of Rs.36,99,035/- with interest and cost against defendant Jagjit Singh Gill on the averments that defendant had raised loan of Rs.35 lakhs from the plaintiff for the purpose of his business promising to return the same on demand with interest @ 18% per annum. The plaintiff had made the payment of loan amount to defendant through account payee cheques issued from his own saving bank account maintained with AXIS Bank, Ltd., Mall Road, Ludhiana, on different

occasions; when defendant refused to make any payment to the plaintiff, he brought a suit against him seeking recovery under Order 37 CPC.

On getting notice, the defendant had appeared and contested the proceedings. In the written statement filed by him, he denied having raised any loan from the plaintiff or agreeing to return the same with interest @ 18% per annum. According to him the payment of Rs.35 lakhs was made towards part of consideration of the sale deed executed by sister of defendant in favour of Mrs. Rohini Aggarwal wife of the plaintiff, therefore the defendant did not have any pecuniary liability towards the plaintiff.

Issues on merits were framed. The parties concluded their evidence and the case was fixed for arguments.

As observed in the impugned order, counsel for the plaintiff had already addressed arguments when the application in question was filed. That application was vehemently contested by the plaintiff. The trial Court vide a detailed and well reasoned order had dismissed the application. The operative part of the order runs as follows:

6. Perusal of the file shows that the present application was filed when the ld. counsel for the plaintiff had already addressed arguments. The certified copies of the documents which have been annexed alongwith the present application also shows that the said documents were applied by the applicant/defendant on 17.07.2019 and as such the said documents were applied for by the applicant/defendant after the ld counsel for the plaintiff had already partly addressed arguments. Thus, it is apparent that the present application has been filed to fill up the lacunae in the present case. Hon'ble Supreme Court in the case K.K Velusamy (supra)

had held that an application for leading additional evidence should be dismissed where it is found that it has been filed to cover up negligence or lacunae. As such, the said ground itself is sufficient to dismiss the present application. It may also be mentioned here that no useful purpose would be served by permitting the applicant/defendant to lead the proposed additional evidence as the plaint, agreement, sale deeds, jamabandies, aks shajra and plan produced in the case titled as 'Harpal Singh Vs Jagjit Singh' are beyond pleadings and they cannot be considered. In this regard I place reliance ratio laid down by Hon'ble Supreme Court in case of Bachhaj Nahar (supra). As discussed earlier, 1d. counsel for the defendant has argued that the proposed additional evidence was not required to be pleaded as the same is only an evidence for the purpose of proving the contents of the written statement and on the other hand it has also been contended by him that the said proposed additional evidence is a relevant fact within the meaning of Section 11 of the Indian Evidence Act. In my opinion this argument of 1d counsel for the defendant is self contradictory as any fact which is relevant must be pleaded. So far as the bank statement of M/s Naunihal Singh & Sons is concerned, no explanation has been given by the applicant/defendant as to what prevented to him from tendering the same at the time of leading evidence as the present case was fixed evidence of defendant on 25.10.2016 and the defendant had availed more than 50 effective opportunities to lead evidence. Mere bonafide mistake or inadvertence is not sufficient as the proposed additional evidence was already within the knowledge of the applicant/defendant. The authorities cited by 1d counsel for the defendant are also not applicable to the present case as the proposed additional evidence is beyond pleadings. It is apparent that the present application has

been filed to delay the proceedings of the present case. As such, the present application is dismissed, subject to costs of Rs. 1500/- to be paid in free legal aid.

I have heard learned counsel for the revisionist besides going through the record and I find that the order passed by the trial Court is detailed and well reasoned, which does not suffer from any illegality or infirmity much less apparent on the face of such order. The order is certainly not arbitrary or perverse. Therefore, no interference by this Court while exercising revisional jurisdiction is called for.

As regards the authorities **Rameshwar & Ors Versus Om Parkash & Ors., 2015(3) Civil Court Cases 711, Narinder Kumar Versus Shri Sat Narayan Mandir through Trust Committee Hindu Panchayati Dharamshala & Anr., 2011(2) Civil Court Cases 678** and **Rajesh Kumar Versus Mangat Rai & Ors., 2012(2) Civil Court Cases 712**, those those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Finding no merit in the revision petition, the same stands dismissed.

5.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No