

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

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**CR No. 3785 of 2017
Date of decision : 21.1.2020**

Satwinder Kaur

.....Appellant

Vs.

Gurdeep Singh

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sunny Singla, Advocate, for the petitioner
Mr. Mohd. Yousaf, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India praying for setting aside the order dated 27.4.2017, passed by Additional Civil Judge (Senior Division), Malerkotla, vide which the application filed by the respondent under Order 6 Rule 17 CPC, for amendment of written statement, has been allowed.

Brief facts giving rise to the present petition are that the petitioner/plaintiff had filed a suit for recovery of an amount of Rs.45,97,500/- on the basis of an alleged pro-note and the receipt, claiming that an amount of Rs.30 lakhs was advanced to the respondent/defendant along with interest @ 1.5% per annum. The said claim was denied by the defendant/respondent on the ground that the pro-note produced by the plaintiff was a false and fabricated document. The issues were framed in the suit. The plaintiff led his evidence. At the time of leading his evidence, the plaintiff had moved an application for seeking samples of hand writing and signatures of the defendant to prove the signatures of the defendant on the said pro-note. However, despite

repeated directions given by the trial Court, the defendant did not come forward to give the samples of his hand writing and signatures. The evidence of the plaintiff was closed on 3.1.2017. Thereafter and at this stage, the defendant moved the application seeking amendment of the written statement; to include therein the assertions, in which he again denied having executed the pro-note in question, however, tried to explain away the signatures on the alleged pro-note by asserting that the scribe of the pro-note Vijay Kumar son of Mulak Raj, who was a commission agent and with whom the defendant was having transaction of selling his crops used to get the signatures of defendant on his Bahi and on blank pro-notes. He might have preserved one such pro-note which is being misused through the plaintiff. Vijay Kumar had also availed loan from defendant. The said Vijay Kumar had also given a cheque to the defendant for repayment of that loan. However, the said cheque was defaulted. On account of the said default, the defendant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 as well. Although in the said complaint, Vijay Kumar has been acquitted, however, the revision filed against that acquittal is still pending before the High Court. Since the said Vijay Kumar was having animosity with the defendant, therefore, he might have helped the plaintiff in fabricating the alleged pro-note.

Arguing the case for the plaintiff/petitioner, learned counsel for the petitioner has submitted that the amendment should not have been allowed by the trial Court. There is nothing on record to substantiate the fact that earlier this averment could not have been made in the plaint. The defendant had not been vigilant in prosecuting his case. When the evidence of the plaintiff has been closed, then at a belated stage, the application has been moved by the

defendant and has been wrongly allowed by the court. This would have the effect of taking the trial to the initial stage of framing the issues; and then the evidence of the parties. Still further, learned counsel for the petitioner has relied upon various judgments of this Court rendered in **'Jeetinder Singh v. Inderjit Singh Batra and others, 2012 (24) RCR (Civil) 176'**, and of Supreme Court in **'M/s Modi Spinning and Weaving Mills Co. Ltd. And another v. M/s Ladha Ram and Co., 1977 AIR (SC) 680, S.Malla Reddy v. M/s Future Builders Co-operative Housing Society and others, 2013 (2) RCR (Civil) 957, Vidyabai and others v. Padmalatha and another, 2009 (1) RCR (Civil) 763'** to contend that the Court had no jurisdiction to allow the amendment in the written statement after the commencement of the trial. It is further submitted that the change of the counsel by the defendant is not the ground for allowing the amendment.

On the other hand, learned counsel for the defendant/respondent has submitted that there is no question of any lack of diligence on the part of the defendant/respondent. The entire facts were duly disclosed by the defendant to the counsel representing him before the trial Court. However, the counsel had not included all the facts in the written statement filed on behalf of the defendant. The defendant came to know of the deficiency at the stage when the affidavit was required to be prepared on behalf of the defendant for being submitted in evidence. At this stage, the defendant realised that his case has not been properly put up before the Court by the counsel. Accordingly, he had to change the counsel and thereafter, the prayer was made before the trial Court for seeking amendment of the written statement. Still further, it is submitted by the counsel that even as per the amended written statement,

defendant is not changing the nature of his defence or averments in his written statement. Earlier also, it was the consistent case of the defendant that he never executed any pro-note and the same was forged and fabricated. Even now the same plea is there. Only a supporting fact is sought to be pleaded by the defendant, so that he could lead his evidence on the said assertion. It is further submitted that unless the averment is there in written statement, the defendant would not be even in a position to lead the evidence qua that aspect. Hence, it is submitted that the trial Court has rightly allowed the application for amendment of the written statement filed by the defendant/respondent.

Having heard learned counsel for the parties and having perused the file, this Court does not find any substance in the argument raised by learned counsel for the petitioner. Although there is no doubt qua the legal proposition involved in the judgments which are mentioned above and which are being relied upon by learned counsel for the petitioner, however, the said judgments are totally distinguishable on the facts of the present case.

So far as the argument of learned counsel for the petitioner qua due diligence is concerned, it has specifically been pleaded by the defendant in the application moved for amendment of the written statement that all the facts were duly disclosed by him to the counsel earlier represented him. However, the facts were not included in the written statement. The deficiency in the written statement came to his knowledge only when the newly engaged counsel was required to prepare the affidavit of the defendant to be submitted in evidenced before the Court. However, since the affidavit itself would not have been material in absence of the necessary averments in the written statement in that regard, therefore, the amendment had become necessary. Thus, there is

nothing to show any lack of diligence on the part of the defendant. The trial Court has rightly believed the assertion of the defendant so far as the diligence on his part is concerned. Fact remains; that the written statement was filed by some other counsel and the application for amendment has been filed after the earlier counsel was changed and the matter has reached the stage of defence evidence. Hence, this Court does not find anything wrong in the finding recorded by the trial Court in this regard.

Even otherwise, the Court below has rightly recorded that since the parties approached the Court for their redressal of substantial grievance, therefore, approach qua the amendment cannot be restricted in nature. In any case, the defendant will have to prove his assertion, as per the law, and the plaintiff will be having his right to rebut any evidence which the defendant might bring in support of his assertions in the amended written statement. Hence, the Court below has rightly recorded that no prejudice would be caused to the plaintiff as such.

However, this Court finds some substance in the argument of learned counsel for the petitioner that the defendant has permitted the case to reach the stage of defence evidence; before moving the necessary application. Because of the amendment of the written statement at this stage, the trial would be further delayed. This would put unnecessary further burden on time and resources of the plaintiff as well. Hence, the plaintiff deserves to be compensated to some extent on that count. Hence, it would not be unjustified if the defendant is burdened with a costs of Rs.10,000/-; to be paid to the plaintiff; for putting extra burden on his time and resources.

Accordingly, the present petition is disposed of. While the order

passed by the trial Court is upheld to the extent of allowing the amendment to the written statement. However, the said order is modified with a direction to the defendant to pay the costs of Rs.10,000/-to the plaintiff.

It is further clarified that the amended written statement of the defendant shall be read in pleadings only after he pays the costs of Rs.10,000/- to the plaintiff, within a period of 15 days from today.

(RAJBIR SEHRAWAT)
JUDGE

21.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No