

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

CR-1108-2020 (O&M)

Date of decision: November 12, 2021

Rajesh Jain

...Petitioner

Versus

Suresh Kumar @ Surinder

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Jain, petitioner in person.

ARUN MONGA, J. (ORAL)

CM-3670-CII-2020

For the reasons stated in the application, the same is allowed. Delay of 222, 96 and 81 days in filing the petition against three impugned orders is condoned.

Main case (O&M)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned orders dated 29.05.2019 (Annexure P-7), dated 02.09.2019 (Annexure P-11) and dated 17.09.2019 (Annexure P-13) passed by the learned Additional Civil Judge (Senior Division), Jind.

2. I have heard learned counsel for the petitioner and gone through the case file.

3. No interference is called for in the orders assailed herein, which are premised, *inter alia*, on the following reasoning:

Order dated 29.05.2019 (Annexure P-7)

“.....As the defendant did not admit his signatures or execution of both the pronotes receipts and further the pronotes are not attested documents rather the pronote dated 31.03.2013 seems to have been filled with two different pens with congested writing, therefore, there arises a case for the defendant to assail the

genuinity of these documents by putting the suit on trial. In totality of these circumstances, this Court is of the view that the defendant shall be afforded a reasonable opportunity to contest the veracity of plaintiff's claim. No prejudice is going to be caused as plaintiff would be having ample opportunity to prove his pleadings. As far as technical objections, defendants appeared only on 20.11.2017 and promptly moved the present application in the pressure of plaintiff. Therefore, there was no need to serve prior notice to plaintiff. The application as well as power of attorney of defendant carry his address. Hence, the application in hand is hereby allowed and defendant is hereby formally allowed to contest the suit on merits. Now, case is adjourned to 30.07.2019 for filing written statement by the defendant."

Order dated 02.09.2019 (Annexure P-11)

"Replication filed. It is a lengthy replication, wherein, plaintiff again took some technical objections with regard to the disability of defendant to file written statement after 90 days. This court has already allowed defendant to file written statement, therefore, aforesaid grounds/ objections are not tenable. The defendant admitted to have borrowed Rs.3,50,000/- from the plaintiff on 01.05.2012, but pleaded to have pay/ return the said amount on different dates. Similarly, the plaintiff also admitted that defendant had paid Rs.2,98,000/- as per annexure P-3 annexed with the plaint. Accordingly, dispute is whether the amount was borrowed on interest and if yes, on what rate? Secondly, the plaintiff also claimed penal interest, which has further been disputed by the defendant. Thirdly, the plaintiff claimed that the suit is within the limitation as the limitation period shall be counted from the last agreed date of repayment of last installment....."

Order dated 17.09.2019 (Annexure P-13)

"..... I opt to differ with the interpretation of the cited provisions as suggested by applicant-plaintiff. Order X CPC deals with examination of parties before framing of issues. Therefore, Order X Rule 2(3) CPC deals with a case where the court requires to call parties in person or any other person suggested by the party to elucidate the matter in controversy in the suit. Similarly, Order XI rule 12 & 14 CPC applies where the document is to be discovered by the party or documents is to be produced by the party at the instance of other party. In the present scenario, plaintiff is in knowledge of the document (though not precisely) which are desired to be produced by the official of LIC, Jind. Order XVI Rule 1(3) CPC enables the court to summons a witness whose name could not be mentioned in the list of witnesses submitted by the parties. In the present case, the plaintiff categorically named all the three witnesses, who are sought to be examined by the plaintiff. He also mentioned the record sought to be brought by these three witnesses. Therefore, this court found no reason to call these three

witnesses as court witnesses. Plaintiff is at liberty to call these witnesses at his own cost by depositing diet money/ process fee etc. During the course of dictating order, applicant-plaintiff interrupted by pointing out that Order X CPC also provides that a witness can be called at any subsequent hearing. He further submitted that he is not desiring to escape payment of diet money, but only want to have an opportunity to cross-examine the desired witnesses. I again reconsidered the aforesaid submissions made by applicant-plaintiff. At the cost of repetition, it is again held that the court found no reason whatsoever to call the desired witnesses as court witnesses. The burden to prove his case is entirely upon applicant-plaintiff. He is the master of his case and call any one as his witness, who he deems fit to call for proving his case and for discharging the onus of the issues placed upon him. Accordingly, present application is hereby disposed off by directing Reader of this court to assess the diet money of the said three witnesses by treating them as plaintiff's witness, if desired to be called by plaintiff as his witness in the course of trial. File be now put up on 15.10.2019, the date already fixed."

4. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this court. Cogent reasons have been given by the learned trial Court while granting leave to defend, allowing the defendant to file his written statement and refusing the petitioner-plaintiff to call three witnesses as court witnesses.

5. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement with.

6. Dismissed.

(ARUN MONGA)
JUDGE

November 12, 2021

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No