

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

CR-622-2021(O&M)

Date of decision : 25.03.2021

Manjeet Singh

... Petitioner(s)

Versus

M/s Deepak Trading Company

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. J.K. Singla, Advocate for the petitioner.

Mr. Munish Bansal, Advocate and
Mr. Prince Goyal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

Heard through physical hearing.

This is a revision petition under Article 227 of the Constitution of India impugning the order dated 29.01.2021 passed by the Civil Judge (Junior Division), Bathinda whereby the application dated 23.10.2019 (Annexure P-3) filed by the defendant-petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the written statement has been dismissed.

The brief facts relevant to the present case are that the plaintiff-respondent filed a suit for recovery of ₹3,00,000/- (₹2,40,000/- being the principal amount and ₹60,000/- being the amount of interest @ 1% per month w.e.f. 16.1.2016 to 15.02.2018) along with pendente lite and future interest @ 1% per month w.e.f. 16.02.2018 till realization of the same.

Written statement was filed by the defendant-petitioner wherein a categoric

Pawan Kumar, Proprietor of the plaintiff-responder Firm on 25.04.2018 in the presence of Jagsir Singh son of Gurdial Singh resident of Sema, District Bathinda in the shop of Tirath Ram after taking said amount from Tirath Ram of Firm Satpal Jindal and the balance amount was also paid to the plaintiff-responder by the defendant-petitioner with interest and no amount was due against the defendant-petitioner, which is recoverable by the plaintiff-responder. On 25.02.2019 issues were framed on the basis of the pleadings of the parties. The evidence of the plaintiff-responder was closed on 01.10.2019. On 14.10.2019, the affidavits of DW-1 and DW-2 were tendered in evidence wherein the stand taken in the written statement was reiterated. At the stage of cross-examination of the defendant-petitioner, an application for amendment of the written statement was filed by the defendant-petitioner under Order 6 Rule 17 CPC. Vide impugned order dated 29.01.2021 the said application was dismissed on the ground of having been filed at a belated stage.

Learned counsel for the defendant-petitioner would contend that the amendment sought in the written statement would not change the nature of the defence raised by the defendant-petitioner in his written statement and that the plaintiff-responder could always be compensated by way of payment of costs. He relies upon the judgment of Hon'ble Supreme Court in the case of "Revajeetu Builders & Developers V/s Narayanaswamy & Sons & others" 2010 (1) RCR (Civil) 27 to contend that in case of amendment of the written statement, the Courts are more liberal in allowing the amendment than that of a plaint.

Learned counsel for the plaintiff-responder has contended that

belated stage and that the stand taken by the defendant-petitioner in the written statement has also been reiterated in the affidavits filed by him in examination-in-chief and that by allowing the present application the same would change the very nature of defence raised by the defendant-petitioner, inasmuch as not only the date of payment is being sought to be changed but also the name of the person to whom the payment is stated to have been handed over is being sought to be changed. Learned counsel for the plaintiff-respondent would further contend that incase the application is allowed the same would amount to *de novo* trial inasmuch as no such suggestion was even put to the defendant-petitioner in his cross-examination qua the new plea sought to be raised now.

I have heard learned counsel for the parties.

In para 9 of the written statement, the defendant-petitioner has taken the following stand:-

“9. That the defendant was selling his crops through commission agents M/s Deepak Trading Company, Bhucho Mandi (plaintiff) and had borrowed the alleged amount from the plaintiff and had repaid the same along with interest to plaintiff and nothing is due against him. It is further submitted that the defendant had repaid Rs.2 Lacs to Pawan Kumar proprietor of plaintiff firm on 25.4.18 in the presence of Jagsir Singh son of Gurdial Singh resident of Sema District Bathinda in the shop of Tirath Ram after taking said amount from Tirath Ram of firm Satpal Jindal and the balance amount was also paid by the plaintiff to the defendant with interest. No amount is due against the defendant recoverable by the plaintiff as falsely alleged. The plaintiff has filed the suit by levelling false and baseless allegations on the basis of forged and fabricated documents.”

The said stand was reiterated in the affidavits submitted in examination-in-chief by the defendant-petitioner. When the case was fixed for cross-examination of the defendant-petitioner, an application for amendment of the written statement was filed by the defendant-petitioner under Order 6 Rule 17 CPC wherein the defendant-petitioner has sought to make the following amendment:-

“(a) In para 9 of legal objection words defendant had repaid Rs.2 Lacs to Pawan Kumar Proprietor of plaintiff firm on 25.4.2018 is liable to be amended as defendant had repaid Rs.2 Lacs to Pradeep Kumar @ Deepa son of plaintiff Pawan Kumar on 10.5.2016.

(b) That in para 3 on merits, words defendant had repaid Rs.2 Lacs to Pawan Kumar proprietor of plaintiff firm on 25.4.2018 is liable to be amended as defendant had repaid Rs.2 Lacs to Pradeep Kumar @ Deepa son of plaintiff Pawan Kumar on 10.5.2016.”

It is trite that the Courts are more liberal while allowing the amendment of a written statement viz-a-viz that of a plaint. However, in the present case not only the trial has commenced but the amendment sought by the defendant-petitioner would change the entire defence as raised by the him in his written statement. Not only is the date of payment, but also the name of the person to whom the payment is stated to have been paid, is sought to be changed. The amendment sought would not only cause prejudice to the plaintiff-respondent but would also necessarily entail a *de novo* trial. The trial is at the fag end inasmuch as the matter is fixed for cross-examination of the defendant-petitioner.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. Accordingly, the present revision petition is dismissed.

25.03.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO