IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2211-2021(O&M)
Date of decision:-4.10.2021

Suresh Kumar

...Petitioner

Versus

Rakesh Kumar

...Respondent

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

Present: Mr.Sanjay Verma, Advocate
for the petitioner.

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H.S. MADAAN, J.

Feeling aggrieved by the dismissal of the application under Order 1 Rule 10 CPC filed by defendant Suresh Kumar, he has approached this Court by way of filing the present civil revision petition praying that the impugned order passed by the trial Court be set aside and application so moved by him be accepted.

Briefly stated, the facts of the case are that plaintiff Rakesh Kumar had brought a suit against his real brother Suresh Kumar seeking recovery of Rs.2,74,18,889/- contending that the parties to the suit had raised a loan of Rs.5,85,00,000/- from Federal Bank, Branch Manesar; however, they could not stick to the repayment schedule; although the liability of both the defendants was joint but the plaintiff had to clear the loan account from his own resources; after great persuasion, the defendant paid Rs.50,00,000/- to discharge his liability partially and did not pay his share in the return of loan. As such according to the plaintiff, defendant owes him Rs.2,63,26,301/- and he is liable to pay this amount with interest and cost to him. When the defendant refused to pay such amount, the plaintiff had filed the suit.

On getting the notice, the defendant appeared and contested the suit. During the proceedings in the trial Court, the defendant moved an application for impleading the Federal Bank, Branch Manesar, Gurugram as defendant No.2, contending that it was a necessary party and suit cannot be disposed of effectively in its absence because dispute between the parties pertains to their rights and liabilities in respect of the loan account opened with such bank.

The application was opposed by the plaintiff. The application was dismissed by the trial Court vide impugned order. The operative part of the order for ready reference is being reproduced as under:

> *10. Plaintiff is dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed. In the instant case, from bare perusal of plaint it is apparent that no relief is sought against any person other than defendants. Reliance can be placed on* ***Khushi Ram V. Lal Man & Ors. AIR 1983 Del 78****.*
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> *11. In the case at hand, neither any relief is claimed against the Federal Bank nor the bank has any interest in the outcome of the litigation. It is admitted by the defendant that the loan account was open jointly in his name and the plaintiff. Whether the defendant*

ever operated the account or not, or he has any liability or no liability in respect of the loan account is a question which can be decided after taking evidence. The defendant can prove his pleadings by summoning the witness from the bank with relevant record. Making the bank a defendant in the case is neither justified nor required. Moreover, if the defendant was desirous of impleading the bank as defendant, he could have done it at the the very first instance. Moving the application at belated stage is just an attempt to cause delay. The ***application (IA No. 01 of 2021) has no merits, thus, dismissed****.*

12. So far as IA No. 02 of 2021 is concerned, the plaintiff has prayed for forfeiture of the right of the defendant to lead evidence on the ground that sufficient opportunities have been given. On the face of it, the court is not inclined to accept the plea because considerable delay was caused due to Covid-19 Pandemic and the situation arising therefrom. The defendant cannot be held responsible for the delay during last 18 months. Fair trial is fundamental to justice delivery system and fair trial includes fair opportunity of being heard. Therefore, ***the application (IA No. 02 of 2021) filed by the plaintiff is also dismissed****.*

Though the defendant is aggrieved by such order but I find that such grouse of the defendant is without any justification. The bank in question has no interest in the present suit since it has already received back its money and now the dispute is between the co-borrowers with regard to the liability to return bank dues. The bank cannot be called a necessary party to be there before the Court essential for arriving at a just decision in the matter. The application under Order 1 Rule 10 CPC was rightly rejected by the trial Court.

I find that the impugned order is well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

4.10.2021 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No