

202

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

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CR-5162-2019 (O&M)
Date of decision : 23.05.2022

Naresh Kumar Aggarwal

...Petitioner

versus

M/s Rinku Khadi Bhandaar through
Proprietors and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhimanyu Singh, Advocate for the petitioner.

Mr. Sumit Sangwan, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 24.07.2019 (Annexure P-3) vide which the application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 filed by the plaintiff-petitioner has been dismissed.

Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed the present civil suit for recovery against the respondents including M/s Rinku Khadi Bhandar through its proprietor Krishan Kumar Goyal and others. During the pendency of the suit Krishan Kumar Goyal, proprietor of the firm, died and his legal heirs were brought on the record. Krishan Kumar Goyal was running two firms - one in the name and style of M/s Rinku Khadi Bhandar and the other in the name and style of M/s Rinku Shawl Emporium. He had affixed the boards of both the firms in front of the shop. In the said civil suit, the firm M/s Rinku Shawl Emporium was not impleaded as a party. In the written statement filed as far back as on 15.11.2016, in para 2 of the preliminary

objections, it was stated that there was no firm by the name of M/s Rinku Khadi Bhandar rather the name of the firm was M/s Rinku Shawl Emporium and the deceased Krishan Kumar Goyal was its proprietor. At the stage of cross-examination of the witnesses, the present application (Annexure P-1) under Order 1 Rule 10 CPC was filed for impleading M/s Rinku Shawl Emporium as a party on the ground that it was only during the cross-examination that the fact came to the knowledge of the plaintiff-petitioner that the firm in question was M/s Rinku Shawl Emporium and hence he filed an application for impleading the said M/s Rinku Shawl Emporium as a party. A reply (Annexure P-2) was filed to the said application. Vide impugned order dated 24.07.2019 (Annexure P-3) the Trial Court dismissed the application. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner would contend that it was only at the stage of cross-examination that the plaintiff-petitioner came to know of the said fact and hence moved an application under Order 1 Rule 10 CPC for impleadment of the firm M/s Rinku Shawl Emporium. The learned counsel would further contend that bills of both the firms have been produced in evidence by the plaintiff-petitioner.

Per Contra, learned counsel for the defendant-respondents has contended that the fact that there were two separate firms was very much within the knowledge of the plaintiff-petitioner since 2016 i.e. when the written statement was filed. However, the plaintiff-petitioner took no steps to implead the said firm as a party. Further, as per the own version of the plaintiff-petitioner the bills of both the firms have been produced in evidence. According to counsel there is no cause of action against M/s Rinku Shawl Emporium which in any case is now time-barred.

Heard.

In the present case a specific objection has been raised in the written statement as far back as in 2016 regarding the non-impleadment of M/s Rinku Shawl Emporium. However, no steps were taken by the plaintiff-petitioner to implead the said firm. Now at the stage of cross-examination the application under Order 1 Rule 10 CPC was moved though no cogent reason is forth-coming for not having impleaded M/s Rinku Shawl Emporium as a party earlier. The suit is for recovery of Rs.7,50,000/- on the basis of goods supplied by the plaintiff-petitioner for the period from 29.07.2013 to 16.10.2014. Now the plaintiff-petitioner wants to implead another firm by the name of M/s Rinku Shawl Emporium on the allegation of purchase of some goods in the name of the said firm. The two firms admittedly are separate entities though may have had a common proprietor. The plaintiff-petitioner by now seeking to implead M/s Rinku Shawl Emporium cannot get over the bar of limitation and if it all there is any cause of action against M/s Rinku Shawl Emporium, the same can be agitated separately in accordance with law.

There is no illegality or infirmity in the impugned order which has been pointed out by the counsel for the plaintiff-petitioner. This Court finds no error in the exercise of jurisdiction by the Trial Court while passing the impugned order.

In view of the above, I do not find any merit in the present revision petition which is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

23.05.2022
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(ALKA SARIN)
JUDGE

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