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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4374-2022 (O&M)
Date of Decision : 12.10.2022

Bal Krishan Verma and Another ....Petitioners

VERSUS

Vijay Kumar Singla ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sahil Soi, Advocate for the petitioners.

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ALKA SARIN, J. **(Oral)**

The present petition under Article 227 of the Constitution of India has been filed challenging the order dated 29.09.2022 whereby an application under Order 6 Rule 17 CPC for amendment of the written statement has been dismissed by the Trial Court.

The brief facts relevant to the present lis are that the plaintiff-respondent herein filed a civil suit for recovery of Rs.2,51,370/- alongwith interest @ 12% per annum from the date of filing of the suit till its realization. Para-1 of the plaint reads as under :

> "*1. That defendants borrowed a sum of Rs.1,71,000/- (One Lac Seventy One Thousand) as friendly loan from plaintiff and to reduce his liability, defendants issued two cheques bearing No.739581 dated 10.01.2013 for Rs.1,20,000/- & Cheque No.739605 dated 28.08.2014 for Rs.51,000/- from his bank account maintained in Punjab & Sind Bank having A/c No. 4946 and 586 at*

> *Punjab & Sind Bank, Guru Nanak Nagar, Patiala and to fulfill his promise to return the amount defendants issued two cheques in favour of the plaintiff as security to return the amount borrowed from the plaintiff."*

In reply to the said paragraph, the following response was given in the written statement, which reads as under :

> *"1. That para No.1 of the suit is wrong and hence denied. It is wrong and hence denied that the defendant borrowed a sum of Rs.1,71,000/- from the plaintiff and to reduce his liability defendant issued two cheques bearing No.739581 dated 10.01.2013 for Rs.1,20,000/- and Cheque No. 739605 dated 28.08.2014 for Rs.51,000/-. It is worth to mention here that the plaintiff has misused the present cheques as previously he has some business transactions with the defendant so the cheques were lying with since long."*

In 2017 though an amended plaint was filed, however, Para-1 of the plaint was not amended. Thereafter, again in 2022, an application for amendment of the plaint was filed by the plaintiff-respondent which was again technical in nature and a statement was made by the counsel appearing on behalf of the defendant-petitioners that no amended written statement was required to be filed. The plaintiff-respondent closed his evidence on 04.02.2021. Thereafter the case was fixed for evidence of the defendant-petitioners and it was adjourned time and again on the request of the learned counsel for the defendant-petitioners. Subsequently, the present application was filed on 23.08.2022 for amendment of the written statement seeking to replace Para-1 of the written statement with the following paragraph :

> "*1. Para No.1 of the plaint it is admitted that the defendant had borrowed an amount of Rs.1,20,000/- from the plaintiff and also issued a cheque bearing No.739581 dated 10.01.2013 for Rs.1,20,000/- from his Bank account Punjab and Sind Bank, Guru Nanak Nagar, Branch Patiala. The plaintiff insisted for return of amount and interest, then the interest amount was settled as Rs.51,000/- and the defendant gave a cheque dated 28.08.2014 of Rs.51,000/- to the plaintiff. Thereafter the plaintiff again insisted the defendant to pay the amount, then the defendant paid the amount of Rs.1,20,000/- to the plaintiff in the month of June 2015 after selling the plot situated at Rurki Distt. Fatehgarh Sahib for a sum of Rs.1,20,000/-. Certified copy of sale deed is attached as Annexure D1. The plaintiff assured the defendant that he will return the cheque of Rs.1,20,000/- on payment of Rs.51000/-. Thereafter the plaintiff misused the cheque dated 10.01.2013 of Rs.1,20,000/- and filed suit for recovery inspite of the fact that the amount has already been paid to him and he also filed a complaint U/s 138 of N.I Act against*

cheque dated 28.08.2014 of Rs.51,000/-. The defendant had paid the amount of Rs.51,000/- in the Court of Ld. JMIC Patiala. Now nothing is pending towards the defendant. The plaintiff has already received the amount alongwith interest. The plaintiff has filed the false and frivolous suit against the defendant, which is liable to be dismissed with costs."

The Trial Court vide impugned order dated 29.09.2022 dismissed the said application. Aggrieved by the said order the present revision petition has been filed.

Learned counsel appearing on behalf of the defendant-petitioners has contended that the amendment sought is only clarificatory in nature. Further, reliance has been placed upon the judgments passed by the Supreme Court in **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. [2007 (2) RCR (Civil) 830]** and **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. [Civil Appeal No.5909 of 2022, decided on 01.09.2022]** to contend that where amendment of written statement is concerned the law is more liberal than that in the case of a plaint and that a defendant is entitled to take a new defence and to plead inconsistent stand and even explain admission by amending a written statement.

Heard.

In the present case the civil suit was filed in the year 2015. Since 2015 the defendant-petitioners have denied that a sum of Rs.1,71,000/- as stated in the plaint was borrowed. The plaintiff-respondent who appeared as his own witness was cross-examined. However, there was no cross-examination on this point as noticed in the impugned order dated 29.09.2022. The evidence of the plaintiff-respondent was closed on 04.02.2021. By way of the present amendment a totally new case is being sought to be set up by the defendant-petitioners wherein now it is sought to be pleaded that an amount of Rs.1,20,000/- was borrowed which since stands repaid and that too in judicial proceedings. Learned counsel for the defendant-petitioners is not in a position to deny the fact that proceedings under Section 138 of the Negotiable Instruments Act, 1881 had been pending and the defendant-petitioners were well aware of the said proceedings and had been appearing in the same. Despite that, no efforts were made to amend the written statement. Now at the fag end, when the matter was fixed for the evidence of the defendant-petitioners, the present application has been moved. Permitting the present application at this stage would amount to a de-novo trial.

There can be no quarrel with the law laid down by the Supreme Court in the cases of **Usha Balashaheb Swami** (*supra*) and **Life Insurance Corporation of India** (*supra*). However, in the present case a perusal of the amendment application reveals that there is no ground forthcoming as to why the said stand could not be taken earlier or as to why the amendment application was not moved at an earlier stage. It is not the case that the said facts were not within the knowledge of the defendant-petitioners. In case the amendment is allowed at this stage, the same would amount to a de-novo trial inasmuch as the same would require a fresh replication, framing of additional issue(s) and thereafter fresh recording of evidence.

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

October 12, 2022 **(ALKA SARIN)**
tripti **JUDGE**

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