

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

**C.R NO. 894 OF 2020 (O&M)
DATE OF DECISION: 08.05.2023**

Labh Singh

...Petitioner

Versus

Inderjit Singh (through LR's) and another

...Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present : Mr. Ashwani Sharma, Advocate,
For the petitioner.

Mr. Umesh Kumar Kanwar, Advocate for
Mr. Vikas Mehsampuri, Advocate,
For LR's of respondent No.1.

Mr. Tarunvir Singh Lehal, Advocate,
For respondent-PSPCL.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting-aside order dated 17.01.2020 (Annexure P-5) passed by learned Civil Judge (Junior Division), Kharar, whereby application filed by petitioner/plaintiff under Order 6 Rule 17 CPC for amendment of the plaint, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Plaintiff has filed a suit for recovery of Rs.10 lakh along with future interest @ 1.5% per month on the basis of post dated cheque/bill of Exchange dated 16.10.2017. Further prayer has been made for grant of permanent injunction restraining defendant No.2 to release the emoluments of defendant No.1 (since deceased) in favour of his legal representatives.

2.2 Plaintiff and original defendant No.1 (since deceased and now represented by legal representatives) were having friendly relations.

In the month of March-2017, defendant borrowed a sum of Rs.10 lakh on

interest for marriage of his daughter. One post dated Cheque bearing No.939699 dated 16.10.2017 was given as security. Unfortunately, defendant No.1 expired on 29.07.2017. Thereafter plaintiff approached the legal heirs of deceased defendant for payment of borrowed amount but in vain. Plaintiff presented said cheque with the bank which was dishonoured with remarks "*Insufficient funds*". Hence, suit was filed.

2.3 Plaintiff/petitioner filed an application under Order 6 Rule 17 CPC pleading that plaintiff paid Rs.10 lakh to defendant No.1 after withdrawing said amount from his bank i.e., State Bank of India, Sarangpur branch on 22.03.2017, 23.03.2017 and 24.03.2017, as mentioned in para 5 of the plaint.

2.4 It is further pleaded in the application that defendant No.1 borrowed a sum of Rs.2 lakh from Amarinder Singh Behal and to repay the same, plaintiff transferred Rs.2 lakh from his account vide cheque No.310226 in the account of Amarinder Singh Behal. The said amount was, therefore, repaid through said transaction from plaintiff's account and therefore, applicant wants to amend the application by incorporating these facts in the plaint.

2.5 Upon notice, reply was filed stating therein that no such amount was paid by plaintiff to defendant No.1. It is further alleged that evidence of plaintiff has already been recorded and this fact is not in the affidavit and now the application has been filed just to fill up the lacunae.

2.6. Learned trial Court after hearing learned counsel for parties, dismissed the application. Hence, the revision petition.

3. I have heard learned counsels for parties and have gone through the records.

4. Perusal of application under Order 6 Rule 17 CPC seeking amendment of plaint reveals that proposed amendment will neither change the nature of suit nor the same is barred by limitation nor even otherwise it is borne out that any new set of facts are being introduced. The proposed amendment of the plaint is in fact merely elaborative. The account statements dated 22.03.2017, 23.03.2017 and 24.03.2017 of bank account of plaintiff are relied upon as per list of documents appended with the plaint. Accordingly, I am of the view that learned trial Court got over-swayed with the fact that adjournment would delay the proceedings. Delay is also detrimental to plaintiff himself in his suit for recovery of money.

4.1. Furthermore, it transpires that trial is still at a very nascent stage and application was moved before plaintiff's cross-examination. Defendant was yet to commence his evidence at the time of passing of impugned order. Proceedings are stated to be held up owing to pendency of instant revision petition before this Court.

5. In the premise, in order to meet ends of justice, petition is allowed. Impugned order is set-aside. Petitioner is permitted to carry out proposed amendment subject to costs of Rs.5000/- to be paid to LR of respondent No.1. Amended plaint be brought on record. Respondent will then be given opportunity to file written statement in answer to the amended plaint. Petitioner shall thereafter be granted one effective opportunity to adduce additional evidence qua the amendment, subject of course to discretion of learned trial Court to further grant opportunity, in case it so desires depending upon exigencies of work before it.

6. Inderjit Singh defendant died on 29.07.2017. Suit was filed in 2017 but actual date of its filing is not available on record of this

petition. If it was filed after the death of Inderjit Singh, the question of maintainability of the suit against him shall also have to be gone into and decided. The order herein above allowing the amendment of plaint is without prejudice to decision of the learned trial court about maintainability of the suit.

7. Pending application(s), if any, shall also stand disposed of.

MAY 08, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No

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5. In the premise, in order to meet ends of justice, petition is allowed. Impugned order is set-aside. Petitioner is permitted to carry out proposed amendment subject to costs of Rs.5000/- to be paid to LR of respondent No.1. Amended plaint be brought on record. Respondent will then be given opportunity to file written statement in answer to the amended plaint. Petitioner shall thereafter be granted one effective opportunity to adduce additional evidence qua the amendment, subject of course to discretion of learned trial Court to further grant opportunity, in case it so desires depending upon exigencies of work before it.

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