

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 877/2023

Date of decision:08/02/2023

Anil Kumar and another

.....Petitioners.

Vs.

Baghail Singh

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vishal Aggarwal, Advocate for the petitioners.

Nidhi Gupta, J.

Present revision petition has been filed seeking setting aside of the order dated 23.1.2023 (Annexure P-9) passed by Id. Civil Judge (JD) Nabha whereby the application filed by petitioners/defendants u/O 6 R 17 CPC for amendment of written statement has been dismissed.

Brief facts of the case are that respondent/ plaintiff presented cheques which was alleged to have been issued by the petitioners in the year 2006/2007. Said cheques were dishonoured, whereupon respondent registered an FIR no. 83 dated 11.9.2013 against the petitioners under Sections 406, 420, 120-B & 506 IPC. It is the petitioners' own case that

pursuant to the FIR, a false investigation was also conducted by the SP Detective, Sangrur wherein statements of certain witnesses were also recorded. Eventually, on 12.4.2019, the petitioners were acquitted in the trial that ensued from the said FIR.

Thereafter, respondent filed the present suit for recovery on 19.4.2016 (Annexure P1), to which petitioners filed written statement dated 26.9.2016 (Annexure P2). The parties led evidence, and vide order dated 4.9.2019 the evidence of the defendants was closed.

At this stage, petitioners filed an application seeking to lead additional evidence qua the enquiry which was conducted in pursuance to the FIR, and regarding the witnesses who had deposed in the said enquiry in favour of the petitioners stating before the police authorities that the petitioners/defendants did not commit any fraud and the entire payment had already been made to the respondent/ Plaintiff earlier. Though the enquiry report is already on court file as Ex. P-29, yet the petitioners stated that additional evidence qua the said evidence already on record was required to be placed on record being essential evidence. This application of the petitioners was dismissed by the Court below vide order dated 1.11.2022 (Annexure P-5); and even the revision petition No.5898/2022 filed by the petitioners against the said order was 'dismissed as withdrawn' by this Court vide order dated 14.9.2022 (Annexure P-6).

After all this, the petitioners have now filed the present application dated 19.12.2022 (Annexure P-7) for amendment of their written statement to bring on record the same facts/ evidence, regarding which their application for additional evidence already stands dismissed. Petitioners are seeking to amend the pleadings to place on record additional facts qua the

same enquiry conducted in pursuance to the registration of the FIR, and qua the same witnesses who had deposed in favour of the petitioners in the said enquiry. It is this application (Annexure P-7) for amendment of the written statement that has been dismissed by the learned trial Court vide impugned order. Hence, the present revision petition.

It is submitted by the learned counsel for the petitioners that the enquiry report as well as the statements of the said witnesses who had deposed in the enquiry, are quite important as it helps to clinch the issue in question, whereby it will be evident that neither any amount was due or payable by the petitioners, nor had they committed any fraud. It is submitted that the learned Trial Court has dismissed the application for amendment of written statement mainly on the ground of delay and laches and therefore, the impugned order is not sustainable. It is submitted that the amendment is sought only to bring on record the additional and conclusive facts for proper adjudication of the matter. It is stated that stand of the petitioners will not be changed in any way and that the additional facts pleaded are just and proper for adjudication of the matter.

No other argument has been advanced by the learned counsel.

Admittedly, the facts now sought to be brought on record pertain to the enquiry conducted and evidence collected in pursuance to the registration of the FIR dated 11.9.2013. Thus, these facts were within the knowledge of the petitioners. Admittedly, too, the FIR finds mention in the written statement, as even the enquiry report is on court file as Ex. P-29. However, it is only with regard to the enquiry report and evidence of certain witnesses that petitioners had “inadvertently” omitted to mention.

Proviso to Order 6 Rule 17 CPC stipulates that:-

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

From the above, it is clear that as per proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

In the present case, it is evident that the facts regarding the enquiry, enquiry report, and deposition of witnesses now sought to be placed on record were well within the knowledge of the petitioners since 2013; and even pleadings with regard to the FIR had been included in the written statement filed by them. It has been admitted that it was only ‘inadvertently’ that the enquiry report already on court file as Ex. P-29, or the deposition of the witnesses were not mentioned in the pleadings. Clearly therefore, the petitioners’ case does not fall within the ambit of exception of due diligence contained in the proviso. As such, the petitioners’ prayer cannot be not allowed at this stage, as except inadvertence no reasons have been forthcoming from the petitioners as to why the said pleas were not taken previously especially since the said facts were already in the knowledge of the petitioners since 2013.

Even otherwise, the relevance or necessity of these facts is not clear as the petitioners already stand acquitted vide order dated 12.4.2019. Admittedly, too issues were framed on 17.10.2016 and petitioners have already closed their evidence on 4.12.2019. In my view this is merely an

attempt on the part of the petitioners to delay the proceedings and to fill up the lacuna in their case by overreaching due process of law. This cannot be permitted.

For the reasons stated above, I find no merit in this revision petition and the same is hereby, dismissed.

08/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No