IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(202) **CR-1005-2019**
Date of Decision : February 23, 2023

Maghar Singh **.. Petitioner**

Versus

HDFC Bank Limited and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mohd. Yousaf, Advocate, for the petitioner.

Mr. Saurabh Bajaj, Advocate, for respondents No. 1, 4 and 5.

Ms. Bhupinder Kaur Bhangu, Advocate, for
Ms. Gagandeep Kaur, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

Present civil revision petition has been filed for setting aside the order dated 20.12.2018 (Annexure P-4) by which, the prayer of the petitioner-plaintiff for framing the additional issues has been declined.

Learned counsel for the petitioner argues that keeping in view the facts and circumstances of the present case, a specific issue should have been framed with regard to the ascertainment of the fact that whether the account in question was opened by the petitioner-plaintiff or not and whether, any amount was withdrawn by the petitioner-plaintiff from the said account in question or not however the trial Court without appreciating the correct facts, dismissed the said claim and even though said issues are very material to decide the civil suit.

Learned counsel for the respondents submits that in the present case, all the endeavour in the suit is to delay the proceedings as son-in-law of the petitioner is involved in the present case and the motive is to save him and to delay the proceedings by filing frivolous applications.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed that in the civil suit filed, the petitioner-plaintiff is seeking declaration by challenging the alleged mortgage deed No.416 dated 18.06.2015 and the story put forward by the petitioner-plaintiff is that without his knowledge, the account was opened by somebody else in the name of the petitioner-plaintiff in order to cheat him and to commit the offence as after receiving the alleged amount of loan, which was deposited in the said account in question, same has been withdrawn so as to implicate him. After the filing of the suit, application was also made under Order 39 Rule 1 and 2 of the CPC for staying of the proceedings against the petitioner-plaintiff, which application was dismissed on 14.05.2018.

The issues were framed and the case was adjourned for the evidence of the plaintiff. Rather than adducing the evidence, the petitioner-plaintiff started seeking adjournments and when last opportunity was granted to the petitioner-plaintiff to lead the evidence, instead of complying with the said direction of the Court, the application was filed by him for framing the additional issues.

The said application for framing the additional issues has been decided by the trial Court with the observation that there is no need of framing the additional issues as the petitioner-plaintiff can prove the case that he had not opened the said account in question with the defendants No. 4 and 5 and had not withdrawn the said amount which has been deposited there by leading evidence qua issue No. 1 and 2 wherein, the plaintiff has sought declaration as well as permanent injunction in his plaint. Despite the said observation, that the petitioner-plaintiff can prove the said issue while leading evidence to the issue No. 1 and 2 which will be good enough and there is no need for framing the additional issues, the present revision petition has been filed.

The conduct of the petitioner-plaintiff can be noticed from the fact that he has filed the civil suit raising a particular claim that he has been defrauded by someone by opening an account in his name and depositing the loan amount in the said account and thereafter, withdrawing the same but no effort is being made by him to expedite the conclusion of the trial. Despite number of opportunities to lead the evidence, the petitioner-plaintiff has not led any evidence to substantiate his claim rather, even after the grant of last opportunity, rather than leading the evidence, the petitioner-plaintiff chose to file a frivolous application for framing of the additional issues. The Court passed an order showing that the grievance being raised by the petitioner-plaintiff is non-existent as the allegations which the petitioner-plaintiff intends to prove in his suit can be proved through issues No. 1 and 2 and there is no need to frame additional issues but still, he chose to file the present civil revision petition. The conduct of the petitioner-plaintiff shows that he does not want his suit to be decided on merits rather, the same has only been filed to keep it pending on one ground or the other. This conduct of the petitioner-plaintiff has to be seen in view of the allegations of the respondents that the account in question, where the loan amount was deposited and later on withdrawn, was operated by the son-in-law of the petitioner himself and father of the son-in-law of the guarantor of the loan, which loan has never been cleared.

Now, appreciating the grounds being raised to challenge the impugned order dated 20.12.2018 (Annexure P-4) under the background of the facts mentioned hereinbefore, it is clear that the plea of the petitioner-plaintiff for framing the additional issues have not been accepted but in the order itself, the trial Court has showed that there was no need to frame the additional issues for the reason that the evidence which the petitioner-plaintiff wants to lead to prove certain evidence, can be led under issues No. 1 and 2 itself.

Learned counsel for the petitioner-plaintiff has not been able to rebut the said finding of the trial Court that he will suffer any prejudice in case the two additional issues are not framed.

That being so, the impugned order dated 20.12.2018 (Annexure P-4) cannot be treated to be perverse or is causing prejudice to the petitioner-plaintiff in any manner and hence, needs no interference by this Court.

Keeping in view the facts and circumstances noticed hereinbefore, the present civil revision petition is dismissed with cost of Rs.25,000/- as the same is found to be frivolous litigation so as to consume the valuable time of the Court. Let the cost imposed be deposited with the Institute for Blind, Sector 26, Near Homoeopathic Medical College And Hospital, Chandigarh.

February 23, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No