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111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1664-2023 (O&M)
Date of Decision: 17.03.2023

M/s Kishan Singh Ujagar Singh

..... Petitioner

Versus

M/s DPD Industries Limited and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sharad Mehra, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

CM-5007-CII-2023

Allowed, as prayed for.

Main Case.

This is a petition filed under Article 227 of the Constitution of India for setting aside the order dated 08.02.2023 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Tarn Taran, whereby the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure filed by respondent No.2 for amendment of written statement has been allowed.

It is submitted by the learned counsel for the petitioner that the Trial Court has wrongly permitted the legal representatives of defendant No.2 to amend their written statement to the effect that the signatures of deceased defendant No.2 on the alleged deed of guarantee were through

impersonation by the plaintiff, despite the fact that original defendant No.2 had even issued the cheque in another proceedings for satisfying the liability under the guarantee deed. Once defendant No.2 had even discharged the liability under the guarantee contract, there was no scope left for disputing the signatures of defendant No.2 on the guarantee deed. Hence, the Court below has gone wrong in law in permitting the legal representatives of defendant No.2 to change the written statement by inclusion of elements of fraud and fabrication qua the contract of guarantee. The same could not have been done. It is further submitted that the new pleadings taken by the legal representatives of original defendant No.2 are even against the original pleadings taken by defendant No.2, hence, the impugned order deserves to be set aside.

Having heard learned counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. A perusal of the file shows that defendant No.2 himself had filed the written statement in the suit filed by the petitioner. In the said written statement, defendant No.2 has specifically denied being the guarantor of defendant No.1. Not only that, it has further been pleaded in the original written statement itself that the plaintiff be put to strict documentary proof qua the defendant No.2 being the guarantor of defendant No.1. In the amendment, the legal representatives are only asserting the same thing; but with a little bit further explanation to introduce the facts which can be proved or disproved in tangible terms.

They are only being more specific in the defence which was already taken by the original defendant No.2. Therefore, it is not even change of nature of the defence, as such. The Trial Court has not committed any illegality or impropriety in permitting the said amendment.

Although, the learned counsel for the petitioner has submitted that earlier the original defendant No.2 has virtually admitted the liability by issuing the cheques qua discharge of liability as a guarantor, therefore, the deed of guarantee cannot be denied, however, this argument is totally misplaced. There is nothing in the written statement filed by the original defendant No.2 to even remotely suggest that any cheque was issued by him towards discharge of liability as guarantor, as alleged by the plaintiff. There can be umpteen number of situations or facts under which the cheques might have been issued by the original defendant No.2 in course of his own business or otherwise. In any case, the plaintiff is not being denied right to defeat the assertions of the original defendant No.2 or the legal representatives of defendant No.2 on the said fact. That plea would still be open for the plaintiff. Hence, even this argument of the learned counsel for the petitioner does not carry any weight.

In view of the above, the order passed by the Trial Court is upheld and the present petition is dismissed.

Needless to say that since an aspect in the nature of further explanation has been added by the defendants, therefore, the plaintiff may be

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permitted to reply the same, if considered appropriate by the plaintiff and if
so requested to the Court.

(RAJBIR SEHRAWAT)
JUDGE

17.03.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No