

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.259

Case No. : C.R.No.1783 of 2020

Date of Decision : August 01, 2023

M/s Siri Chand Padam Chand
and another

.... Petitioners

vs.

Rohit Singla

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rajan Bansal, Advocate
for the petitioners.

Mr. Kashish Garg, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 10.02.2020 (Annexure P-7), passed by learned Civil Judge (Senior Division), Bathinda (hereinafter referred to as – the Trial Court), whereby application under Order 6 Rule 17 CPC, moved by the plaintiff-respondent, for amendment of replication, has been allowed.

2. Petitioners are the defendants before the Trial Court.

3. Learned counsel for the petitioners submits that the plaintiff-respondent filed a suit for recovery of Rs.12,17,000/- (Rs.9,00,000/- being the principal amount and Rs.3,17,000/- being interest amount @ 12% per annum from the date of advancement of loan till the date of filing of suit).

4. The petitioners, being defendants, contested the suit by filing

written statement and denied the advancement of loan. It was further submitted that the plaintiff-respondent had relied on a receipt dated 10.04.2015 for Rs.5,00,000/- and another receipt dated 12.05.2015 for Rs.4,00,000/-, wherein there were recitals that interest for three months in advance had already been received by the plaintiff-respondent. In other words, Rs.18,000/- from the alleged payment of Rs.5,00,000/- and Rs.13,800/- from the payment of Rs.4,00,000/- had already been deducted. However, this fact was concealed by the plaintiff-respondent from the learned Court.

5. The plaintiff-respondent filed replication whereby it was denied that there was recital in the alleged writings that interest for three months had been received in advance.

6. Later, plaintiff-respondent filed application for amendment of replication to replace the words "*The interest amount had been paid in cash*" with the words "*No interest amount had been paid at that time*".

7. Learned counsel for the petitioners has submitted that on the one hand, plaintiff-respondent is relying on receipts but want to deny recitals in the said receipts about interest for three months paid in advance. It has further been submitted that no new plea can be raised in the replication and the plaintiff-respondent can only rebut the new pleas taken in the written statement. A party cannot be allowed to withdraw the earlier admission or to introduce a new fact. He has relied upon four judgments passed by this Court in Chander Shekhar vs. State of Punjab reported as 1995(2) CLJ(Service) 566, Swaran Kaur vs. Harjit Singh reported as 2000(2) RCR (Civil) 466, Jaswinder Singh vs. Bakshish Singh and another

reported as 2017(2) RCR (Rent) 571 and Gurjot Singh Gill vs. Vikramjit Singh reported as 2018(1) RCR (Rent) 678.

8. Learned counsel for the respondent has submitted that the case of respondent, set up in the plaint, is that the loan was advanced to the defendants-petitioners. The receipts dated 10.04.2015 and 12.05.2015 were executed by defendants-petitioners but they did not pay any amount to the plaintiff-respondent, neither out of principal amount nor out of interest. Inadvertently, in the replication, it was written that the amount of interest for three months was paid in cash, whereas nothing was paid to the plaintiff-respondent. It is further submitted that the defendants-petitioners have not admitted the receipts. Even if there is recital in the receipts that amount of interest for three months was paid in cash, it would be decided only during trial but the respondent-plaintiff cannot be denied to amend the replication. Reliance in this regard has been placed on a judgment of Hon'ble Supreme Court passed in Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another - Law Finder Doc Id # 2029338 and prayer has been made that since trial of the case has not yet started, no prejudice would be caused to the other party. So, amendment is necessary for just decision of the case.

9. I have heard submissions made by learned counsel for both the parties.

10. The case of the plaintiff-respondent is that the loan was advanced to the defendants-petitioners and two receipts were executed. Neither the principal amount nor the interest amount was paid to the plaintiff. The defendants denied advancement of any loan and also the

execution of the receipts. The plaintiff, in the replication, stated that interest for a period of three months was paid in cash but now, the plaintiff wants to amend the replication stating that no amount of interest was ever paid to him. The evidence is yet to be started. The replication is part of the pleadings. By allowing the proposed amendment, nature of case would not change. It is a question of evidence whether receipts were executed when the loan was advanced or three months' interest was paid in advance or not. If amendment really sub-serve the ultimate cause of justice, then the said amendment is required to be allowed. In case **Life Insurance Corporation of India** (*supra*), it is held by Hon'ble Supreme Court that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice to the rights of other party.

11. In the case of **Chander Shekhar** (*supra*), relied upon by learned counsel for the petitioners, it is held by a Division Bench of this Court that no new plea on the facts can be allowed to be raised in the replication. In the judgment passed in the case of **Jaswinder Singh** (*supra*), it is held that tenant cannot be allowed to withdraw from his admission and to introduce a new fact about admitted rate of rent by way of amendment. In case of **Gurjot Singh Gill** (*supra*), it is held that by virtue of amendment, party cannot be allowed to get out of his admission and the amendment should be bona fide in nature.

12. In the case in hand, there is no mala fide in seeking the amendment and it is not in any way inconsistent with the case set up by the plaintiff-respondent in his plaint. The authorities cited by learned counsel

for the petitioners are distinguishable on facts and not applicable to the case

in hand. The learned Trial Court has passed a well reasoned speaking order and there is no illegality in the same.

13. Accordingly, the present revision petition is dismissed. However, the petitioners may file rejoinder to the replication, if they so desire. The Trial Court shall give an opportunity to the petitioners to file rejoinder to the replication, if they so wish.

14. Parties are directed to appear before the learned Trial Court on 04.09.2023.

15. Pending applications, if any, shall stand disposed of along with this judgment.

August 01, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.