IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2307-2019(O&M)
Date of decision:-20.4.2023

Rajinder Pal Singh

...Petitioner

Versus

Mrs. Neelam @ Kanta

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Swati Verma, Advocate
for the petitioner.

Mr.Akhil Kashyap, Advocate for
Mr.Parveen K. Kataria, Advocate
for the respondent.

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H.S. MADAAN, J.

1. Being impugned in this revision petition is the order dated 8.2.2019 passed by Civil Judge (Jr.Divn.), Ludhiana in civil suit for specific performance titled 'Neelam @ Kanta Versus Rajinder Pal Singh' vide which an application under Order 6 Rule 17 CPC filed by the defendant for amendment of written statement had been dismissed.

2. Briefly stated, facts of the case are that the application in question was filed by the defendant contending that his previous counsel had wrongly admitted the facts of the suit filed by the plaintiff; as a matter

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of fact no agreement dated 23.2.2016 was entered into between the plaintiff and defendant for sale of the suit property, rather it was a loan transaction between the plaintiff and defendant inasmuch as the defendant had borrowed a sum of Rs.2 ½ lakhs from the plaintiff, which had been returned by him to the plaintiff, however, at that time, the plaintiff had obtained signatures of defendant on some blank stamp papers, which she did not return to defendant even after receipt of the loan amount and those documents might have been converted into agreement to sell.

Inter alia in the application it was alleged that the previous counsel for the defendant in connivance with the plaintiff had admitted the case, therefore, defendant is required to be given an opportunity to prove his case on merits and necessary amendment in the whole written statement is required to be made.

3. The application was resisted by the plaintiff contending that it is an attempt to withdraw admission made by the defendant, which is not legally permissible; issues on merits were framed in July, 2018; examination in chief of witnesses of the plaintiff were recorded on 30.8.2018 and defendant had already availed of three opportunities for cross examination of such witnesses without actually doing so and thereafter the application in question has been filed. Therefore, it be dismissed.

4. After hearing arguments, the trial Court vide the impugned order had dismissed the application. For ready reference the operative part of the order is being reproduced as under:

> 4. *The submission of both the sides have been considered. The*

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defendant by way of present application seeks the permission to amend his written statement on the ground that his previous counsel in connivance with the plaintiff has admitted the case of the plaintiff and the defendant be given an opportunity to lead his case on merits. The defendant by way of present application wants to amend his written statement by denying the alleged agreement dated 23.02.2016 entered into between the plaintiff and the defendant and wants to raise the plea that the defendant borrowed the sum of Rs. 2,50,000/- from the plaintiff and the said amount already stood paid to the plaintiff and accordingly, the said transaction was loan transaction. The plaintiff, at the time of providing the loan to the defendant, got signed certain blank stamp papers in lieu of the said loan amount. The present suit has been filed by the plaintiff for the specific performance of agreement to sell dated 23.02.2016 alleged to be executed between the plaintiff and the defendant and for permanent injunction. The application under Order 39 Rule 1 and 2 of CPC, moved by the plaintiff was allowed vide order dated 06.07.2018 and thereafter the case was adjourned for the evidence of the plaintiff. The case was fixed for the cross-examination of PW-1 and PW-2, when the present application was moved by the defendant. The defendant filed the new power of attorney on 30.08.2018 and thereafter the case was adjourned to 20.09.2018 for the

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evidence of the plaintiff and from 20.09.2018, the case was adjourned to 01.11.2018 and from 01.11.2018, the case was adjourned to 06.12.2018 for the evidence of the plaintiff and on 06.12.2018, the defendant moved the present application for the amendment of his written statement. The present application for amendment has been moved after the gap of more than three and half months from the date when the defendant filed the new power of attorney of his counsel. The defendant in his written statement has admitted the claim of the plaintiff and now by way of the present application wants to amend the written statement by deny his stand taken by him in his written statement.

5. *It has been clearly laid down by the Hon'ble Punjab and Haryana High Court in case titled as Balvir Singh Vs. Jaspal Singh & Anr. - 2014 (1) Civil Court Cases 784 (P&H), which is reproduced as under:-*

(I) Civil Procedure Code, 1908, O.6.R.17-Written statement-Amendment Defendant made categorical admission regarding execution of agreement and subsequent cancellation thereof in written statement-Hold, it cannot be allowed to be withdrawn by way of amendment-petition dismissed.

(II) Civil Procedure Code, 1908, O.6.R.17-Written statement-AmendmentAdmission-Cannot be withdrawn when it goes to the root of the case and the entire complexion of

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the written statement is sought to be changed by withdrawing such admission. (Para 5)

6. *Accordingly, keeping in view the above referred judgement of the Hon'ble Punjab and Haryana High Court, the present amendment cannot be allowed as the defendant by way of present application wants to completely change his stand taken by him in his written statement and the entire complexion of the written statement is sought to be changed by withdrawing such admission and accordingly, the present application being devoid of merits and stands dismissed. The judgement relied upon by the defendant is not applicable to the facts and circumstances of the present case. The case is adjourned to 11.03.2019 for the evidence of the plaintiff.*

5. Such order left the defendant aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondent, who put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Learned counsel for the revision petitioner has advanced arguments as per the assertions in the application, whereas learned counsel for the respondent has made submissions in tune with the pleas taken in the written reply.

8. Learned counsel for the revision petitioner has referred to

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judgments ***Rajesh Kumar Aggarwal & Ors. Versus K.K. Modi & Ors., 2006(2) RCR(Civil) 577, Harbans Singh and others Versus Biro @ Charanjit Kaur, 2014(4) RCR(Civil) 702, Sushil Kumar Jain Versus Manoj Kumar & Anr., 2009(3)RCR(Civil)899*** and ***Sagar Singh Slathia Versus Surinder Pal Singh, 2009(3) RCR(Civil) 37*** in support of her contentions.

Whereas learned counsel for the respondent has referred to judgments ***Balvir Singh Versus Jaspal Singh & Another, 2014(1) Civil Court Cases 784*** and ***Ram Niranjan Kajaria Versus Sheo Prakash Kajaria and others*** passed by the Apex Court in support of his contentions.

9. After considering the rival contentions and going through the judgments referred to by learned counsel for the parties, I find that there is no merit in the revision petition. As has been rightly observed admission made in the written statement cannot be allowed to be withdrawn by putting blame on the earlier counsel representing the defendant. The application is also quite belated having been filed after the trial in the case had started and as per the proviso to Order 6 Rule 17 CPC amendment at that stage cannot be allowed. The defendant cannot possibly withdraw the admission made to the prejudice of the plaintiff. The application was rightly rejected by the trial Court.

10. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and

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circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

20.4.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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