**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4436-2023 (O&M)
Date of Decision : 13.09.2023

Pargatti Askay Pvt. Ltd. ...... Petitioner

Versus

Jai Bharat Bricks Udyog ...... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Lupil Gupta, Advocate
for the petitioner.

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VIKRAM AGGARWAL, J (ORAL)

CM-16729-CII-2023

Application for placing on record Annexures P-6 and P-7 and also exempting the applicant-petitioner from filing the certified/true typed copies of the same is allowed as prayed for subject to all just exceptions. Annexures P-6 and P-7 are taken on record.

CR-4436-2023

1. The present revision petition, preferred under Article 227 of the Constitution of India, challenges the order dated 17.07.2023 (Annexure P-5), passed by the Civil Judge (Junior Division), Sohna, vide which the application filed under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement was dismissed.

2. A suit for recovery (Annexure P-1) was filed by the respondent-plaintiff seeking recovery of Rs.27,11,160/- alongwith

interest @ 18% per annum. The case, set up by the respondent-plaintiff, was that the respondent-plaintiff was involved in the business of supplying bricks. The petitioner-defendant placed an order for supply of bricks and the bricks were duly supplied against different bills. Out of the total bills amounting to Rs.1,06,59,580/-, a sum of Rs.79,48,420/- was transferred in the account of the respondent-plaintiff by way of RTGS and Rs.27,11,160/- was outstanding. Upon refusal of the petitioner-defendant to pay the outstanding amount, the suit was filed.

3. In the written statement, filed by the petitioner-defendant, a stand was taken that at the time of supply of bricks, the respondent-plaintiff used to raise delivery challans and the same were duly acknowledged by the petitioner-defendant vide acknowledgment receipts mentioning the corrosponding number of delivery challans. At the end of the month, a consolidated bill used to be raised by the respondent-plaintiff upon which the payment would be made. It was averred that as on 03.03.2016, a sum of Rs.2,23,560/- was outstanding against bill No.474. On 17.03.2016, respondent-plaintiff requested the petitioner-defendant to pay the aforesaid amount upon which the petitioner-defendant directed its accountant to transfer the said amount in the account of the respondent-plaintiff. On 18.03.2016, instead of making a payment of Rs.2,23,560/-, mistakenly a sum of Rs.79,48,420/- was credited in the account of respondent-plaintiff through RTGS. However, immediately, after

transferring the said amount, a call was given to the respondent-plaintiff who assured that the amount would be returned and accordingly a cheque amounting to Rs.79,48,420/- dated 18.03.2016 was issued by the respondent-plaintiff. Subsequently, the respondent-plaintiff deputed one of his employees with whom the petitioner-defendant's representative visited the bank to withdraw the amount but it was found that the person deputed by the respondent-plaintiff was not authorized to withdraw the said amount. Some other facts were also pleaded.

4. During the pendency of the trial, an application for amendment of the written statement was moved under Order 6 Rule 17 read with Section 151 CPC (Annexure P-2). The petitioner-defendant sought to introduce para 10-A in which an averment was sought to be introduced that when the employee of the respondent-plaintiff and the representative of the petitioner-defendant visited the Corporation Bank at Sohna to withdraw the amount, the respondent-plaintiff handed over a photocopy of the cheque to the representative of the petitioner-defendant and himself left the bank with the original cheque. Further a counter claim with regard to recovery of Rs.79,48,420/- was also sought to be introduced.

5. The application was opposed by way of a reply (Annexure P-4).

6. By way of the impugned order dated 17.07.2023 (Annexure P-5), the application was dismissed leading to the filing of

the present revision petition.

7. I have heard learned counsel for the petitioner.

8. Learned counsel for the petitioner has submitted that the trial Court erred in rejecting the application for amendment of the written statement. Learned counsel made efforts to convince this Court that the averments could not be made in the written statement earlier nor could the counter claim be filed on account of the fact that the previous representative did not properly pursue the case. Learned counsel has submitted that the amendment in the written statement and the filing of the counter claim would be essential for the just decision of the case.

9. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. In so far as the amendment of the written statement is concerned, the petitioner-defendant tried to introduce a new version which would not be permissible. In the original written statement, the stand which was taken, was that the respondent-plaintiff had issued a cheque of Rs.79,48,420/- but nowhere it was stated that only a photocopy of the cheque had been given to the respondent-plaintiff and that the respondent-plaintiff himself left the bank with the original cheque. The petitioner-defendant, in all probability was trying to introduce this paragraph in the written statement to make out a ground for filing the counter claim. It is settled law that by way of an amendment, the nature of the suit or the defence cannot be changed nor any plea can

be introduced provided the applicant was not aware of the said fact at the time of filing of the previous pleadings. In so far as the counter claim is concerned, it is settled law that a time barred claim cannot be raised after the period of limitation by way of a counter claim. Admittedly, the incident of the deposit of the alleged amount was of 18.03.2016. Recovery, if any, was to be made within a period of 03 years from the said date. However, the application for amendment was moved in 2023 i.e. much after the period of limitation. The trial Court rightly placed reliance upon the judgments in the cases of ***Rohit Singh vs. State of Bihar 2007 (1) RCR (Civil) 674, South Konkon Distilleries and others Vs. Prabhakar Gajanan Naik and others 2008 (4) RCR (Civil) 513, Madan Lal Vs. S.L.Maloo and others 2012 (3) PLR 221, Kohinoor Hosiery Mills Vs. New Bank of India 1993 (3) RRR 367, Satyapal Singh Vs. Firm Swastik Plaza and 4 others 2018 (3) A.R.C. 805 and Nini Kumar Jain Vs. Smt. Neena Devi and others CR No.2314/2001, decided on 14.09.2006***. In coming to the conclusion that a counter claim could not be raised after the period of limitation had expired.

In view of the above, I do not find any merit in the present revision petition and the same is hereby dismissed.

13.09.2023 **(VIKRAM AGGARWAL)**
mamta **JUDGE**

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