IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

289 **CR No.5052 of 2019 (O&M)**
Date of Decision : 30.01.2023

Parveen Kumar ....Petitioner

VERSUS

Devinder Singh and Another ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Swarn Tiwana, Advocate for the petitioner.

None for the respondents despite service.

ALKA SARIN, J. (Oral)

The present revision petition has been filed impugning the order dated 23.07.2019 whereby the application filed by the plaintiff-petitioner for leading secondary evidence has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed an application/suit under Order XXXI Rule 1 of the Code of Civil Procedure, 1908 as forma pauperis for recovery of Rs.12,50,000/- along with interest @ 18% per annum from 15.05.2008 till realization. In the plaint, a specific averment has been made that the defendant-respondents gave cheque no.422994 dated 31.12.2008 drawn on State Bank of Patiala, Branch Sirhind Mandi to the plaintiff-petitioner but the said cheque was dishonored due to insufficient funds in the account of the defendant-respondent in the above bank and, as such, the plaintiff-petitioner could not get the amount of Rs.6,50,000/- of the above said cheque. During the pendency of the suit, an application was filed for permitting secondary evidence to prove the cheque dated 31.12.2008. In the application it was simply mentioned that the original has been lost and that the plaintiff-petitioner had tried to locate the same, however, he could not locate it. A

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reply was filed to the said application. Vide the impugned order the application was dismissed.

Learned counsel for the plaintiff-petitioner would contend that the original was lost and hence the cheque was sought to be proved by way of secondary evidence. It is further the contention that the Trial Court has wrongly dismissed the application only on the ground that the cheque now sought to be produced by way of secondary evidence bears the name of Amrik Singh son of Kaka Singh.

None has been putting in appearance on behalf of the respondents despite service. They are, hence, proceeded against ex-parte.

Heard.

A perusal of the plaint reveals that neither is there any averment qua any cheque having been issued in the name of Amrik Singh nor is there any reference to Amrik Singh son of Kaka Singh in the entire plaint. A specific averment has been made in para 3 of the plaint that the cheque no.422994 dated 31.12.2008 drawn on State of Bank of Patiala, Branch Sirhind Mandi in the name of plaintiff-petitioner had been dishonoured. On a pointed query by this Court as to how any evidence beyond the pleadings would be material, learned counsel for the plaintiff-petitioner has tried to explain that the cheque in a compromise was issued in the name of Amrik Singh son of Kaka Singh. However, the said argument cannot be accepted inasmuch as the plaint does not refer to any Amrik Singh or any such alleged compromise. In the absence of any pleadings, no case is made out for leading secondary evidence qua the cheque in the name of Amrik Singh.

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In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition, which is devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

30.01.2023
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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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