

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5047-2023
Date of Decision:-**01.09.2023**

VISHAL MAHAJAN

... Appellants/Petitioner(s)

Versus

BALJIT SINGH

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Deepak Arora, Advocate
for the petitioner. .

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner/defendant against order dated 17.5.2023 (Annexure P-5) passed by the Court of Additional Civil Judge (Senior Division), Gurdaspur in civil suit No.262/2018 vide which the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the written statement has been dismissed.
2. The counsel for the petitioner while assailing the impugned order submits that at the time of filing of the original written statement, petitioner disclosed to his counsel that cheque No.056052 worth ₹10 lac was never handed over by the petitioner to the respondent/plaintiff

and rather cheque book containing cheque Nos.056001 to 056100 relating to Axis Bank's account Gurdaspur of the petitioner was lost and to this effect DDR was lodged at Gurdaspur on 3.11.2015 having ID/SR No.1014242 and further that the suit filed by the respondent is time barred and that petitioner issued cheque No.45 of Canara Bank Gurdaspur worth ₹10 lacs relating to his bank account No.1402201100604 as a security cheque and later on balance payment as mentioned in the suit i.e. ₹16,14,389/- was paid to the respondent/plaintiff through bank transactions which are detailed in the application. That however the counsel representing the petitioner in the trial Court due to inadvertence failed to take all these pleas in the original written statement filed on behalf of the petitioner. The counsel for the petitioner further submits that during the trial when the petitioner came to know about the said omissions being made by his earlier counsel while filing the written statement, immediately thereafter petitioner filed an application under Order 6 Rule 17 CPC for amendment of written statement. It is further submitted that there is no delay in filing of the application seeking amendment of written statement and the said amendment is necessary for the proper adjudication of the controversy between the parties. It is further submitted that in the given circumstances the impugned order is liable to be set aside.

3. I have considered the submissions made by counsel for the petitioner.
4. From the perusal of the plaint (Annexure P-1), it appears that respondent filed suit for recovery of ₹16,14,389/- along with interest

against the petitioner alleging that petitioner is running the business of rice shelling and both the parties are having business transactions since 2013 and that in order to discharge his liability petitioner issued 2 cheques bearing No.056052 worth ₹10 lac and 055879 worth ₹6,14,389/- drawn on Axis Bank, branch Gurdaspur from his bank account No.914020040185088 in favour of respondent and both the cheques bear signatures of the petitioner and on presentation both the cheques were dishonored on the ground that their validity period had expired. The suit was contested by the petitioner, who filed written statement wherein it was admitted that there were business dealing between the parties and during the course of said transactions certain payments were made in cash as well as by way of advance cheques as security. In the written statement, it was nowhere pleaded that cheque number 056052 of ₹10 lacs was never handed over by the petitioner to the respondent. In the said written statement, it was also nowhere pleaded that that cheque book containing the said cheque was lost or that the matter with regard to loss of the cheque book was reported to the police on 03.11.2015 or that the suit is time barred or that cheque No.45 of Canara Bank, Gurdaspur was handed over to the respondent by the petitioner as security cheque.

5. During arguments, it has come to the notice of this Court that after the commencement of trial the respondent/plaintiff appeared in the witness box and even the facts which now the petitioner intend to plead by way of amendment, were not put to him in his cross-examination.

6. It is not the case of the petitioner that he was not aware of the aforesaid facts at the time of filing of his written statement whose copy is Annexure P-2. The only plea taken by the petitioner is that this all happened due to inadvertence of his counsel who was earlier representing him in the trial Court. It is highly improbable that the petitioner was unaware about the aforesaid omissions made by his previous counsel even at the time of cross-examination of respondent/plaintiff. So in the present case the petitioner has failed to establish that inspite of due diligence he could not have raised the amended pleas before the commencement of trial. Further as per the law laid down by Hon'ble Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. 2022 SCC Online SC 1128**, the petitioner cannot be allowed to withdraw the clear admission made by him in his written statement regarding issuance of cheque in question as a security cheque and further cannot be allowed to take plea at this belated stage to the effect that actually cheque book containing cheque No.056052 was lost and the matter was reported to the police on 3.11.2015.
7. In the light of the above, the learned trial Court rightly observed that the law with regard to amendment is liberal but cannot be allowed to be misused by a party to fill up the lacuna in its case. Further there is no plausible explanation put forth by the petitioner as to what prevented him from pleading the facts which he intends to plead by way of amendment, at the initial stage or when respondent/plaintiff

was cross-examined. So there is no illegality or infirmity in the impugned order.

8. Consequently the present revision petition is dismissed. However, it is made clear that even if no plea with regard to suit being time barred is there in the original written statement, the learned trial Court could suo moto take into consideration the said defence as per the provision of Section 3 of Limitation Act, at the time of final arguments.

01.09.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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