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

CR-5331-2023

Date of Decision:- 25.09.2023

Malkit Singh

...Petitioner

Vs.

Balwinder Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

AMARJOT BHATTI, J. (Oral)

1. Malkit Singh – petitioner has filed petition under Article 227 of the Constitution of India for setting aside the impugned order dated 21.08.2023, Annexure P-10 vide which the trial Court has dismissed the application filed by the petitioner under Order XIV Rule 5 read with Section 151 C.P.C. for framing additional issues as per the plea taken by the respondents, as the same being wrong, illegal and unjust.

2. The learned counsel for the petitioner pointed out that he had filed a suit for recovery on the basis of pro-note and receipt dated 16.10.2013, which is Annexure P-1. The translated copy of pro-note and receipt is Annexure P-2. The suit was contested by the defendant who appeared in this case and filed written statement, which is Annexure P-3. Thereafter, the issues were framed by learned Additional Civil Judge (Senior Division), Khanna, as per order dated 18.08.2021, which is Annexure P-4. While framing issues, no issue was framed regarding the stand taken by the respondent/defendant in the written statement where it

was alleged that the pro-note and receipt dated 16.10.2013 is a forged and fabricated document, which is a result of fraud and misrepresentation. When the specific issue was not framed, the petitioner had filed application under Order XIV Rule 5 read with Section 151 C.P.C., which is Annexure P-8. The reply to the application is Annexure P-9 and the said application was declined vide impugned order dated 21.08.2023, which is Annexure P-10 by holding that this stand taken by the defendant No. 1 was covered under issue No. 1. It is pointed out that since specific stand was taken by the respondent-defendant, therefore, the issue was required to be framed and the application filed by the petitioner/plaintiff was wrongly rejected vide impugned order dated 21.08.2023.

3. I have considered the arguments and have gone through the record carefully. Considering the fact that all the relevant documents are placed on record as well as considering the nature of controversy, I do not find any reason to give notice to the respondent as it will lead to unnecessary delay in the disposal of the case. I have considered the arguments and the documents on record. The petitioner/plaintiff filed suit for recovery on the basis of pro-note and receipt dated 16.10.2013. The plaint is Annexure P-1. I have gone through the contents of written statement, Annexure P-3, in which there is specific preliminary objection No. 3 in which Balwinder Singh took the stand that the pro-note and receipt dated 16.10.2013 is forged and fabricated document which is a result of fraud and misrepresentation, having prepared by the plaintiff in connivance with the marginal witnesses. There was specific stand taken by the respondent/defendant, therefore, the learned trial Court was required to frame specific issue on this preliminary objection. Later on, the plaintiff filed application under Order XIV Rule 5 read with Section 151 C.P.C. for

framing of additional issue and despite filing of this application, the same was rejected vide impugned order dated 21.08.2023, which is Annexure P-10. It is the duty of the trial Court to frame issues on the basis of pleadings of the parties. Once a specific stand was taken by the defendant in preliminary objection No. 3, the Court was required to frame specific issue on the same and the onus to prove that issue was on the defendant. It cannot be said that the stand taken by the defendant in preliminary objection No. 3 will be covered in issue No. 1 framed by learned Additional Civil Judge (Senior Division), Khanna. The trial Court could have framed additional issue *suo moto* once it came to the notice that some material issue was left to be framed. But in the case in hand, the learned Additional Civil Judge (Senior Division), Khanna, despite filing of application under Order XIV Rule 5 read with Section 151 C.P.C. declined the application by passing impugned order dated 21.08.2023.

Therefore, considering the aforesaid facts, the civil revision preferred by the petitioner is accepted and the impugned order dated 21.08.2023, Annexure P-10 is accordingly, set aside with further direction to the learned trial Court to frame specific additional issue with regards to the stand taken by the defendant in preliminary objection No. 3.

The civil revision is accordingly, disposed of.

25.09.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes/No