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

CR-5386 of 2023
Date of decision: 15.09.2023

Lilu Ram

......Petitioner

Versus

M/s Anil Kumar Ashish Kumar

......Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ajay Kamboj, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. This revision petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 25.08.2023 (Annexure P-5) passed by the Court of learned Civil Judge (Junior Division), Sirsa, whereby application filed by the petitioner-defendant under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement has been dismissed.

2. Brief facts, leading to the filing of the present revision petitioner are to the effect that respondent-plaintiff filed a suit for recovery of Rs.13,93,500/- due towards the petitioner-defendant as principal as well as upto date interest along with future interest @ 2% per month from the date of borrowings till realization of the amount in favour of the respondent on the basis of running open and current account of the petitioner with the respondent. On 08.03.2021 petitioner-defendant filed an application under Section 151 CPC for

permission to produce further evidence to prove that the respondent-plaintiff is a money lender without mandatory money lending license under the Punjab Money Lender's Act, 1938 (hereinafter referred to as 'the Act'). Respondent-plaintiff filed reply to the said application. The said application was dismissed by the Court of learned Civil Judge (Junior Division), Sirsa, vide order dated 01.08.2022. Petitioner challenged the said order before this Court by way of Civil Revision No.3302 of 2022, which has been dismissed on merits vide order dated 21.08.2023. Thereafter, petitioner moved an application under Order 6 Rule 17 CPC for amendment of his written statement, which has also been dismissed by the Court of learned Civil Judge (Junior Division), Sirsa, vide impugned order dated 25.08.2023.

3. Learned counsel for the petitioner contended that the trial Court has wrongly dismissed the application of the petitioner. He further contended that petitioner could not take the defence now sought to be taken by way of amendment due to lack of knowledge that respondent-plaintiff is dealing in money lending business without having money lender's lincece required under the provisions of the Act. He further contended that despite due diligence the said evidence was not within his knowledge. He further contended that amendment in the written statement is essential for the just and proper adjudication of the case and if the petitioner is not allowed to amend his written statement, he will suffer irreparable loss.

4. I have heard learned counsel for the petitioner and perused the record.

5. In ***Vidyabai and others, (2009) 2 SCC 409***, Hon'ble Apex Court observed as under:-

> *"10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6, Rule 17 of the Code, which reads as under:*
>
> *'Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*
>
> *It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial."*

6. Perusal of the above makes it clear that amendment cannot be allowed after commencement of the trial unless the Court comes to the conclusion that in spite of due diligence the party could not have pleaded the matter, sought to be pleaded through amendment, before commencement of trial. This Court does not find any reason as to why while filing written statement he did not take the defence that suit of the plaintiff was barred as respondent-plaintiff was involved in the business of money lending without having any licence under the Act. Earlier also petitioner had filed application for permission to produce further evidence to prove that respondent-plaintiff is a money lender and running his business without having mandatory licence required under the provisions of the Act. The said application has been dismissed by

the trial Court and the order stands upheld upto this Court. Relevant portion of the order dated 21.08.2023 passed in CR-3302 of 2022 by this Court is reproduced as under: -

> *"6. Perusal of the record shows that the petitioner filed application for permission to lead further evidence to prove that plaintiff-respondent was a money lender, who was running his business without the mandatory provision of the Act. The said application was filed at the final stage of the case when the same was at the stage of arguments. Defendant-petitioner failed to disclose any reason for not producing the said documents during the course of evidence. Evidence of defendant-petitioner was closed on 20.07.2019 and the application for permission to lead further evidence was filed on 08.03.2021 when the case was at final stage, which shows that course adopted by the petitioner is nothing but delaying tactics to delay the proceedings of the case. Additional evidence cannot be allowed when both the parties have closed their evidence as it would amount to de novo trial. It is settled law that additional evidence can only be allowed where the evidence sought to be led was not in the knowledge of the party or with due diligence he could not lay hands on that piece of evidence so sought to be adduced. However, petitioner failed to prove that he was not in the knowledge of the documents sought to be placed on record by way of present application."*

7. Petitioner has failed to prove that he was not in knowledge of the facts now sought to be pleaded by way of amendment. The evidence of both the parties has been concluded and the case is at the fag end at arguments stage. Thus, the course adopted by the petitioner is nothing but delaying tactics to prolong the proceedings of the case.

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

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

(NAMIT KUMAR)
JUDGE

15.09.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No