

2023:PHHC:142273

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-5752-2023

Date of decision : 07.11.2023

Sham Sunder

.....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. (ORAL)

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 learned Civil Judge (Junior Division), Sirsa, whereby an 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.1,46,398/- 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/plaintiff on the basis of running open and current account of the petitioner/defendant with the respondent/plaintiff.

The petitioner/defendant appeared and filed written statement and

pleaded that the suit filed by the respondent/plaintiff is false and frivolous. The petitioner/defendant used to sell his agricultural produce at the respondent/plaintiff's firm. Neither the petitioner/defendant borrowed any money from the respondent/plaintiff nor he put his signature in any account books of the respondent/plaintiff. Only due to good dealing in between them, the petitioner/defendant put his signature on the printed forms/vouchers where the respondent/plaintiff required from him. Thereafter, the petitioner/defendant moved an application under Order 6 Rule 17 CPC for amendment of his written statement, which has also been dismissed by learned Civil Judge (Junior Division), Sirsa, vide impugned order dated 25.08.2023. Aggrieved against the said order, the petitioner has filed the instant revision petition.

3. Learned counsel for the petitioner contends that the trial Court has wrongly dismissed the application filed by the petitioner for amendment in the written statement without appreciating the fact that the respondent is doing the business of money lending without mandatory licence as required under the provisions of the Punjab Registration of Money Lender's Act, 1938 (for short 'the 1938 Act') which fact was not in the knowledge of the petitioner. He further contends that despite due diligence the said evidence was not within his knowledge. The petitioner wants to incorporate the amendment that the suit filed by the respondent/plaintiff is barred under the 1938 Act. He further contends 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.

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

5. In *Vidyabai and others Vs. Padmalatha & Another* : (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 therefore 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 respondent/plaintiff was barred as he was involved in the business of money lending without having any licence under the 1938 Act.

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

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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 dated 25.08.2023 (Annexure P-5) passed by learned Civil Judge (Junior Division), Sirsa 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.

07.11.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No