IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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124

CR-5838-2023 (O&M)
Decided on : October 04, 2023

PARGATTI ASKAY PVT LTD.

...... Petitioner

Versus

JAI BHARAT BRICKS UDYOG

...... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Lupil Gupta, Advocate
for the petitioner.

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NAMIT KUMAR, J. *(Oral)*

1. The instant Revision Petition has been preferred by the petitioner under Article 227 of the Constitution of India seeking issuance of directions to the trial court to consider the counter-claim of the petitioner and to decide the same alongwith the main suit as the petitioner does not want to lead fresh evidence.

2. The brief facts relevant for disposal of the present Revision Petition are that a suit for recovery (Annexure P-1) was filed by the respondent-plaintiff seeking recovery of Rs.27,11,160/- alongwith interest @ 18% per annum. The case, set up by the respondent-plaintiff, was that the respondent-plaintiff was involved in the business of supplying bricks. The petitioner-defendant placed an order for supply of bricks and the bricks were duly supplied against different bills. Out of the total bills amounting to Rs.1,06,59,580/-, a sum of Rs.79,48,420/- was transferred in the account of the respondent-plaintiff by way of RTGS and Rs.27,11,160/- was outstanding. Upon refusal of the petitioner-defendant to pay the outstanding amount, the suit was filed.

3. In the written statement, filed by the petitioner-defendant, a stand was taken that at the time of supply of bricks, the respondent-plaintiff used to raise delivery *challans* and the same were duly acknowledged by the petitioner-defendant vide acknowledgment receipts mentioning the corresponding number of delivery *challans*. At the end of the month, a consolidated bill used to be raised by the respondent-plaintiff upon which the payment would be made. It was averred that as on 03.03.2016, a sum of Rs.2,23,560/- was outstanding against bill No.474. On 17.03.2016, respondent-plaintiff requested the petitioner-defendant to pay the aforesaid amount upon which the petitioner-defendant directed its accountant to transfer the said amount in the account of the respondent-plaintiff. On 18.03.2016, instead of making a payment of Rs.2,23,560/-, mistakenly a sum of Rs.79,48,420/- was credited in the account of respondent-plaintiff through RTGS. However, immediately, after transferring the said amount, a call was given to the respondent-plaintiff who assured that the amount would be returned and accordingly a cheque amounting to Rs.79,48,420/- dated 18.03.2016 was issued by the respondent-plaintiff. Subsequently, the respondent-plaintiff deputed one of his employees with whom the petitioner-defendant’s representative visited the bank to withdraw the amount but it was found that the person deputed by the respondent-plaintiff was not authorized to withdraw the said amount. Some other facts were also pleaded.

4. During the pendency of the trial, an application for amendment of the written statement was moved under Order 6 Rule 17 read with Section 151 CPC (Annexure P-2). The petitioner-defendant sought to introduce para 10-A in which an averment was sought to be introduced that when the employee of the respondent-plaintiff and the representative of the petitioner-defendant visited the Corporation Bank at Sohna to withdraw the amount, the respondent-plaintiff

handed over a photocopy of the cheque to the representative of the petitioner-defendant and himself left the bank with the original cheque. Further a counter claim with regard to recovery of Rs.79,48,420/- was also sought to be introduced. After the said application having been dismissed vide order dated 17.07.2023, the instant revision petition has been filed by the petitioner.

5. Learned counsel for the petitioner submits that the limited prayer made in the present revision petition is to direct the trial court to consider the counter-claim of the petitioner and to decide the same alongwith the main suit as the petitioner does not want to lead any fresh evidence.

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

7. It is apt to mention here that the impugned order dated 17.07.2023 was challenged by the petitioner in CR No.4436-2023, which was dismissed by a Co-ordinate Bench of this Court vide order dated 13.09.2023 by recording following findings:-

> *" 8. Learned counsel for the petitioner has submitted that the trial Court erred in rejecting the application for amendment of the written statement. Learned counsel made efforts to convince this Court that the averments could not be made in the written statement earlier nor could the counter claim be filed on account of the fact that the previous representative did not properly pursue the case. Learned counsel has submitted that the amendment in the written statement and the filing of the counter claim would be essential for the just decision of the case.*
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> *9. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. In so far as the amendment of the written statement is concerned, the petitioner-defendant tried to introduce a new version which would not be permissible. In the original written statement, the stand which*

was taken, was that the respondent-plaintiff had issued a cheque of Rs.79,48,420/- but nowhere it was stated that only a photocopy of the cheque had been given to the respondent-plaintiff and that the respondent-plaintiff himself left the bank with the original cheque. The petitioner-defendant, in all probability was trying to introduce this paragraph in the written statement to make out a ground for filing the counter claim. It is settled law that by way of an amendment, the nature of the suit or the defence cannot be changed nor any plea can be introduced provided the applicant was not aware of the said fact at the time of filing of the previous pleadings. In so far as the counter claim is concerned, it is settled law that a time barred claim cannot be raised after the period of limitation by way of a counter claim. Admittedly, the incident of the deposit of the alleged amount was of 18.03.2016. Recovery, if any, was to be made within a period of 03 years from the said date. However, the application for amendment was moved in 2023 i.e. much after the period of limitation. The trial Court rightly placed reliance upon the judgments in the cases of ***Rohit Singh vs. State of Bihar 2007 (1) RCR (Civil) 674, South Konkon Distilleries and others Vs. Prabhakar Gajanan Naik and others 2008 (4) RCR (Civil) 513, Madan Lal Vs. S.L.Maloo and others 2012 (3) PLR 221, Kohinoor Hosiery Mills Vs. New Bank of India 1993 (3) RRR 367, Satyapal Singh Vs. Firm Swastik Plaza and 4 others 2018 (3) A.R.C. 805 and Nini Kumar Jain Vs. Smt. Neena Devi and others CR No.2314/2001, decided on 14.09.2006****. In coming to the conclusion that a counter claim could not be raised after the period of limitation had expired.*

In view of the above, I do not find any merit in the present revision petition and the same is hereby dismissed. "

8. Upon a query being put to the learned counsel for the petitioner that as to how this second revision petition is maintainable, by impugning the same order, which was the subjct matter of the earlier revision petiiton and the same stands already dismissed, no explanation has been given by learned counsel for

the petitioner except by submitting that the instant revision petition has been filed only with a limited prayer to direct the trial court to consider the counter-claim and to decide the same alongwith the main suit. It is surprising that the counter-claim, which was proposed in the application for amendment of the written statement, has not been allowed, so as to how a direction can be sought for deciding the same alongwith the civil suit. Thus, by way of filing this present second revision petition assailing the same impugned order, the petitioner has not approached this Court with clean hands and he is not only wasting the time of the court but also abusing the process of law and such kind of practice needs to be curtailed by imposing exemplary costs, therefore, the same is liable to be dismissed with exemplary costs.

9. Consequently, the present revisoin petition is dismissed being not maintainbale, with costs of Rs.20,000/- (Rupees Twenty Thousand) to be deposited with Legal Services Authority , Haryana at Chandigarh, within a period of two months.

10. All pending application(s), if any, shall stand disposed of.

October 04, 2023 **(NAMIT KUMAR)**
mkkoundal **JUDGE**

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