

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

CR No.6216 of 2022

Date of Decision: 08.05.2023

Sunil Kumar

.....Revisionist-petitioner

Versus

M/s K.S. Industries

.....Respondent

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Himanshu Jain, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.(Oral)

By way of the instant revision petition, the petitioner-defendant (here-in-after to be referred as 'the defendant') has laid challenge to the order dated 22.09.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division), SAS Nagar (for short 'the trial Court'), whereby the application (Annexure P-2) moved by him (defendant) under Order 6 Rule 17 CPC for seeking the amendment in the counter-claim, has been dismissed.

2. Shorn and short of unnecessary details, the facts leading to the filing of the present revision petition, are that the respondent-plaintiff-Firm (here-in-after to be referred as 'the plaintiff') filed a Civil Suit for seeking a decree for permanent injunction against the defendant and the defendant also filed the counter-claim with a prayer for the joint possession of the suit

property and for the recovery of the damages amounting to Rs.9,91,500/- as well. However, thereafter, he (defendant) moved application Annexure P-2 for seeking amendment in the counter-claim by way of enhancing his claim for the damages to the tune of Rs.15,69,732/- which has been dismissed by the trial Court vide the impugned order.

3. I have heard learned counsel for the petitioner-defendant in the instant petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the defendant contends that at the time of initially filing the counter-claim, some of the Bills and Cheques could not be taken into consideration to work out the amount of damages and when calculated subsequently, the actual total amount came out to be the one as proposed to be incorporated in the counter-claim by way of its amendment and this amendment will not change the nature of the Suit and is essential for the proper adjudication of the dispute between the parties. To buttress his contentions, he has placed reliance upon the observations made by the Apex Court in **Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon 1969 AIR 1267; Rajesh Kumar Aggarwal and others vs. K.K. Modi and others, Appeal (civil) 5350-5351 of 2002 decided on 22.03.2006; Mahila Ramkali Devi and others vs. Nandram (D) Thr. LRs. and others, Civil Appeal No.2366 of 2010 decided on 14.05.2015; Sampath Kumar vs. Ayyakannu and another 2002(4) RCR (Civil) 566** and by the Co-ordinate Bench in **Bharat Bhushan vs. Jatinder Kaur and another, Civil Revision No.5263 of 2016 decided on 01.04.2019.**

5. However, the above-raised contentions are devoid of any merit because undisputedly, the Bills and Cheques, pertaining to the proposed enhanced amount of damages, were in existence and within the knowledge of the defendant since even prior to the institution of the Suit in the year 2016. The trial Court has specifically mentioned in the impugned order Annexure P-1 that the issues were framed in the Suit on 08.05.2018 and the plaintiff had already concluded its evidence on 27.09.2018 and even the defendant himself had also appeared in the witness-box and had tendered his affidavit in his examination-in-chief, meaning thereby that the trial has commenced in the said Civil Suit. Throughout in his application Annexure P-2, the defendant has not come forward with any fair, candid and plausible explanation for not accurately calculating the amount, sought to be claimed as damages, at the time of filing his counter-claim in the first instance.

6. The observations made by Hon'ble Supreme Court in **Jai Jai Ram Manohar Lal (supra); Rajesh Kumar Aggarwal and others (supra); Mahila Ramkali Devi and others (supra); Sampath Kumar (supra)** and by the Co-ordinate Bench in **Bharat Bhushan (supra)**, would be of no avail to the defendant in view of the subsequent judgment rendered by the Apex Court in **Pandit Malhari Mahale vs. Monika Pandit Mahale and others Civil Appeal No.189 of 2020 decided on 10.01.2020**, wherein it has been held that *“where the evidence had begun in the suit and thereafter, the amendment application was filed but the Civil Judge had not returned any finding that the Court was satisfied that inspite of due diligence, the party could not have raised the matter before the commencement of the trial,*

the order of the trial Court allowing the amendment application was unsustainable". These observations are fully applicable to the present case and in the light of the same, it is explicit that the trial Court has rightly dismissed application Annexure P-2 as moved by the defendant for seeking the amendment in the counter-claim.

7. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand stands dismissed.

May 08, 2023
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes