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

CR-2611-2024 (O&M)

Date of decision : 23.05.2024

Ramesh Bisnoi

... Petitioner(s)

Versus

Aabhal Devi and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Manvendra Singh Bishnoi, Advocate
Mr. Abhay Nanda, Advocate and
Mr. Daman Jeet Singh, Advocate for the petitioner.

Mr. A.S. Lamba, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 03.04.2024 (Annexure P-4).

2. In brief, the facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for recovery of Rs.85,29,704/- as detailed in the plaint. In para 4 of the plaint it was stated that the predecessor-in-interest of the plaintiff-respondents, namely, Manohar Lal, used to lend money to the defendant-petitioner herein through cheques drawn from his account maintained with State Bank of India, Adampur, District Hisar. However, it was specifically stated that there was no writing which was executed



between the parties. Details of the amounts given by cheques have been mentioned in para 5. In the written statement-cum-counter-claim it was denied that any amount was ever borrowed from Manohar Lal, rather they used to invest together and Manohar Lal had suggested to the defendant-petitioner herein to join him in investing money in the purchase of a flat at Gurgaon. It was further stated that the defendant-petitioner agreed to invest and share 1/3rd cost of the flat. The flat was allotted in the name of Manohar Lal and payments were directly made by the defendant-petitioner. In para 5 of the written statement further details of the payment have been mentioned. In the counter-claim, it was stated that the counter-claimants were entitled to recover Rs.5,02,800/-. The Trial Court vide the impugned order framed the issues. However, while framing the issues it has observed that since it has been admitted by the defendant-petitioner that money was taken from Manohar Lal and, hence, the right to begin was placed on the defendant-petitioner. Aggrieved by the same, the present revision petition has been preferred.

3. The learned senior counsel appearing on behalf of the defendant-petitioner would contend that it has not been admitted anywhere that any amount whatsoever was borrowed from Manohar Lal. Rather, the defense is that there were some joint investments which were made and payments were directly made by the defendant-petitioner. It is further the contention of the learned senior counsel that it is the plaintiff-respondents who have filed the suit for recovery and the right to begin ought to have been placed on the plaintiff-respondents. It is only once they discharge their



onus that the onus would shift on the defendant-petitioner to prove his case. It is further the contention of the learned senior counsel that the main issue is Issue No.2, which reads as under :

“2. Whether the plaintiffs are entitled for recovery of Rs.85,29,704/- alongwith future interest @ 12% per annum ? OPP

and the onus of which has correctly been cast on the plaintiff-respondents and hence the right to begin ought to have been placed on the plaintiff-respondents. In support of his contentions, the learned senior counsel has relied upon the judgments in the cases of **Om Parkash Vs. Amit Choudhary & Ors. [2019 (7) AD (Delhi) 170]**; **Mohammad Jahangir @ Mohammad Jahangir Alam Vs. Sajda Khatoon & Ors. [2007 (25) RCR (Civil) 220]** and **Bajaj Auto Ltd Vs. TVS Motor Company Ltd. [2010 (36) RCR (Civil) 447]**.

4. *Per contra*, the learned counsel for the plaintiff-respondents would contend that the right to begin has correctly been placed on the defendant-petitioner inasmuch as he has admitted the liability.

5. I have heard the learned counsel for the parties.

6. Order 18 Rule 1 of the Code of Civil Procedure, 1908 (CPC) reads as under :

“1. Right to begin - The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on



some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”

7. The provisions of Order 18 Rule 1 CPC clearly reveal that the plaintiff has a right to begin unless the defendant admits the facts as alleged by the plaintiff. In the present case, on a perusal of the written statement, it cannot be said that there is any admission which has been made by the defendant-petitioner. Issue No.2 has correctly been framed and onus has been cast on the plaintiff-respondents. The plaintiff-respondents have approached the Court for a suit for recovery on the ground that Manohar Lal had lent money to the defendant-petitioner herein. The factum of the defendant-petitioner ever having taken the loan has specifically been denied. In view thereof, the right to begin ought to have been placed on the plaintiff-respondent.

8. In view of the above, the observation made by the Trial Court in the impugned order dated 03.04.2024 (Annexure P-4) placing the right to begin on the defendant-petitioner is set aside. Accordingly, the right to begin is placed on the plaintiff-respondents herein.

9. The present revision petition stands allowed. Pending applications, if any, also stand disposed off.

23.05.2024

Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO