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

CR-3386-2019 (O&M)
Reserved on: 17.11.2023
Date of decision: 08.01.2024

TULA RAM **..Petitioner**

Versus

SUBHASH **..Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Sh. Ajay Jain, Advocate
for the petitioner.

Mr. Nitin Jain, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. The plaintiff has filed this revision petition to assail the correctness of the order passed by the trial Court while dismissing his application under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. On 11.03.2015, the plaintiff (petitioner) filed a suit for recovery of Rs.20,40,000/- against Sh. Subhash. It was alleged in the plaint that the defendant is a property broker and he contacted the plaintiff with his father Sh. Ami Lal Makkar on 16.02.2011 and, requested the plaintiff to advance the money, which was accepted by the plaintiff and Rs.15,00,000/- was paid to the defendant, who in order to repay the loan in part has issued a post-dated cheque of Rs.15,00,000/- drawn on HDFC Bank Ltd., Railway Road, Hisar, payable on 14.02.2015. However, when the plaintiff presented the

said cheque in his bank, the same was 'dishonoured'. A notice was issued under Section 138 of the Negotiable Instruments Act, 1881, however, on the assurance given by the defendant, the plaintiff did not file a complaint. However, as per the present scenario even after a lapse of more than 2 years, the payment has not been made. The defendant while filing the written statement asserted that the suit is bad on account of non-joinder of necessary parties as the dispute, if any, exists between the plaintiff and Sh. Sandeep son of Sh. Sukhbir and Sh. Pardeep son of Sh. Ami Lal Makkar (brother of the defendant). It was alleged that the brother of the defendant namely Sh. Pardeep and his friend Sh. Sandeep borrowed Rs.25,00,000/-, from the plaintiff and Sh. Roshan Lal. The defendant handed over two cheques to the plaintiff and Sh. Roshan Lal against security, which have been dishonoured.

4. Thereafter, the issues were culled out for adjudication and the case was fixed for evidence. The plaintiff tendered his affidavit in lieu of the examination-in-chief. At that stage, the plaintiff filed an application under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure, 1908, for impleadment of Sh. Pardeep and Sh. Ami Lal Makkar as defendants and amendment of the plaint. Reply to the application was filed by the defendant. The trial Court has dismissed the application on the ground that suit for recovery against Sh. Pardeep and Sh. Ami Lal Makkar has become time barred as the prescribed period of limitation for filing a suit is three years from the date when the loan was taken.

5. The correctness of the aforesaid order has been challenged in this revision petition. It may be noted here that the learned counsel representing the respondent while relying upon the judgment passed in

Nirmal Singh Vs. Tarsem Singh, Civil Revision No.3791 of 2013, decided on 01.05.2014, has submitted that a single application for impleading the proposed defendants under Order I Rule 10 and amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908, is not maintainable. It has also been contended that the suit against Sh. Pardeep and Sh. Ami Lal Makkar has become time barred and therefore, order passed by the trial Court shall be sustained.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. In fact, the maintainability of a single application with two different prayers has already been examined by this Court in ***Civil Revision No.1752 of 2016, titled as "Daljit Kaur and another Vs. Bhupinder Singh and others, decided on 05.01.2024***. It is evident from reading of Order I Rule 10(4) that the Code of Civil Procedure, 1908, itself envisages the amendment of the pleadings on impleadment of a party. In ***Nirmal Singh's case (supra)***, the attention of the Court was not drawn to Order I Rule 10(4). Moreover, the attention of the Court has not been drawn to any statutory provision either in the Code of Civil Procedure, 1908 or in the High Court Rules and Orders, which mandates filing of separate applications or bars the filing of a single application having both the prayers. Sometimes, the application for permission to amend is interconnected to the prayer sought under Order I Rule 10. Apart from the consequential amendment sought in the pleading which is necessitated on account of impleadment, certain facts against the persons sought to be impleaded are also required to be alleged while amending the plaint.

8. Keeping in view the aforesaid facts, the first objection of the learned counsel is not sustainable.

9. The High Court only remanded the case back to the trial Court for a fresh decision while expressing that a separate application should be filed, however, as already noticed that case has been decided in the peculiar facts of the case.

10. As regards the second ground, it may be noted that the suit for recovery has already been filed on the basis of a dishonoured cheque. It is the case of the defendant that the amount was borrowed by his brother. Although, a copy of the written statement filed by the defendant as well as the copy of the application filed for permission to amend the plaint are undated, however, it appears that the written statement was filed somewhere in late 2015 or 2016, whereas, the application for permission to implead and amend the plaint was filed in the year 2017. It is evident from the fact that the reply to the application filed under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure, 1908, was filed by the defendant on 06.09.2017. Thus, from the date the defendant objected for the rejoinder of parties, the application for permission to amend was filed within the prescribed period of limitation. The trial Court has relied upon the judgment passed in ***M/s Honey Bee Natural Products Pvt. Ltd. Vs. Amarjodh Singh, 2006 (2) PLR 353***. This is a short order passed by the Court after noticing that the application was filed when the trial of the case was almost completed and there was a delay of more than 4 years. In the present case, the position is entirely different. This objection can be considered by the trial Court at the time of final hearing of the suit. At this stage, dismissal of

application on the ground of limitation is not appropriate because the evidence is yet to be led by the parties. It has also come on record that the cheque was dishonoured and on the request of the defendant, complaint under Section 138 of the Negotiable Instruments Act, 1881, was not filed.

11. Reliance in this regard can be placed upon ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2022 SCC Online SC 1128***.

12. In view of the aforesaid discussion, while allowing the revision petition, the impugned order is set aside. The plaintiff is permitted to amend the plaint. The Court is directed to proceed with the case in accordance with law.

13. All the pending miscellaneous applications, if any, are also disposed of.

January 08th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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