

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CR-1254-2024 (O&M)

Harpreet Singh
...Petitioner

VERSUS

Dharam Singh
...Respondent

(ii) CR-3377-2024 (O&M)

Harpreet Singh
...Petitioner

VERSUS

Dharam Singh
...Respondent

Date of Decision: January 30, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Poonam Verma, Advocate
for the petitioner.

Mr.Parshant Bansal, Advocate
for the respondent.

ARCHANA PURI, J.

These are two revision petitions filed by petitioner Harpreet Singh (defendant before learned trial Court), thereby, assailing order dated 29.01.2024, whereby, his evidence was closed by order and also order dated 15.04.2024, whereby, an application filed under Order 14 Rule 5 read with Section 151 CPC, for framing of additional issue, was though allowed and additional issue was framed, whereby the onus to prove was upon him, but

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however, the case was adjourned for rebuttal evidence of the plaintiff-responder, if any, and for arguments.

The parties are referred to as making appearance before learned trial Court.

The facts germane, to be noticed, are as herein given:-

That, plaintiff Dharm Singh (respondent) had filed a suit against defendant-Harpreet Singh (petitioner), thereby, seeking recovery of Rs.8 lakh, as per the pronote and receipt dated 29.06.2016. As per the version put forth, the defendant had borrowed an amount of Rs.8 lakh @ 1% per month interest, from the plaintiff, vide pronote and receipt dated 29.06.2016. Further, it is the version that though, plaintiff had been making request to make payment of the aforesaid amount, but to no effect and thereupon, the suit for recovery was filed.

However, in the written statement, the defendant raised various preliminary objections, thereby, disputing the maintainability of the suit and challenged the locus standi of the plaintiff to file the suit and that the suit is time barred. Furthermore, he has not come to the Court with clean hands and also that he has got no cause of action, to file the present suit and estopped by his own act and conduct from filing the suit.

On merits, it was denied that defendant availed any loan from the plaintiff, as alleged. Also, it was denied that defendant had executed pronote and receipt, in favour of the plaintiff. In fact, it was categorical claim of the defendant that he had never executed any pronote, in favour of the plaintiff and this Court, has got no jurisdiction to entertain and try the present suit. In fact, in paragraph No.10, it was asserted that signatures shown in the

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pronote, are the signatures of the defendant as the same has been managed by the plaintiff, in order to grab money from the defendant.

Keeping in view the aforesaid pleadings of the parties, it is essential to note that when the case was at the stage of recording of the evidence of the petitioner-defendant and no evidence was brought on record, on 29.01.2024, learned trial Court had closed the evidence by and the order passed is herein reproduced:-

“No Dw is present. Perusal of record shows that already eleven effective opportunities have been availed by defendant to conclude his evidence. Undertaking for grant of last opportunity of Ld. Counsel for defendant was recorded on 03.07.2023 and despite that evidence has not been concluded. In these circumstances there is no reasonable justification with this court to adjourn the case again for the same purpose. Hence evidence of defendant is closed by virtue of order dated 03.07.2023.

Now, case is adjourned to 02.02.2024 for rebuttal evidence of plaintiff, if any and/or for arguments.”

The aforesaid order forms the subject matter of challenge in CR-1254-2024.

In the same suit, after the closing of the evidence, the petitioner-defendant had also filed an application under Order 14 Rule 5 read with Section 151 CPC, for framing of the additional issue, copy whereof is Annexure P-3. The said application was allowed vide order dated 15.04.2024 and fresh issue 5-A was framed, which reads as herein given:-

“5-A. Whether the pronote itself is forged one? OPD”

After framing of the said issue, the case adjourned further for

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rebuttal evidence of the plaintiff, if any and/or for arguments.

The aforesaid order dated 15.04.2024 passed by learned trial Court, has also been challenged by the petitioner-defendant in CR-3377-2024.

In pursuance of the notice issued, the respondent made appearance through counsel.

Learned counsel for the parties heard.

From the perusal of the impugned order dated 29.01.2024, it is evident that while taking into consideration the undertaking given by learned counsel for the defendant, on 03.07.2023, to conclude the evidence, made the basis of the said order, vide which, the evidence of the defendant was closed. In CR-1254-2024, various orders have been placed on record from Annexure P-5 onwards, to show in what manner, the proceedings were conducted, with regard to the recording of the evidence of the defendant.

Very true, as submitted by learned counsel for the respondent, that several opportunities had been granted to the defendant to lead evidence. On 03.07.2023, the zimini order was passed by the Court, on the basis of the undertaking given by counsel for the defendant and the same is reproduced, as herein given:-

*“Cost paid. No evidence of defendant is present. Counsel for defendant suffered statement as under: “I under take to conclude entire evidence of defendant on next date of hearing.”
Heard In view of statement of counsel for defendant recorded separately today, case is adjourned to 21.07.2023 for entire evidence of defendant.”*

However, from the subsequent orders, coming forth, it is

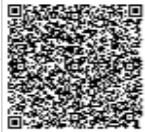
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evident that on 21.07.2023, an application was filed for allowing the defendant to furnish his personal initial signature for proper comparison for expert opinion and the case stood adjourned further for filing reply and for this purpose, several opportunities were granted.

During the pendency of the said application, on 20.10.2023, another application under Order 18 Rule 17 CPC read with Section 311 of the Evidence Act, was filed by the petitioner-defendant, for recalling of PW-1 Dharam Singh and PW-2 Saroop Singh, for the purposes of further cross-examination and reply was sought. During the pendency of the said application, the previous application for obtaining of the signatures for comparison, to seek expert opinion, was allowed by the Court, vide order dated 03.11.2023, copy whereof is Annexure P-3.

Thus, from the aforesaid, it is evident that even after giving of undertaking by counsel for the petitioner-defendant, an application was moved for furnishing of the signatures of the defendant on the pronote and the same was allowed. Thus, it is evident that there was change of circumstances, after the undertaking was given by counsel for the defendant and therefore, the previous undertaking recorded in order dated 03.07.2023, could not form the basis of the impugned order, vide which, the evidence was closed by order.

Even if, it had been closed by the order, due to the constrained circumstances faced by learned trial Court, then also, after the application for obtaining of signatures for comparison was allowed, the opportunity to lead evidence, ought to have been given. Not only this, even the application for framing of addition issue was moved and thereafter, it was also allowed



vide order dated 15.04.2024, which has also been challenged vide CR-3377-2024.

Considering the same, the evidence, even though, was closed by order, at first instance, but however, after the framing of additional issue No.5-A, the onus whereof, was upon the defendant, as observed in the order, had to open and the case, in any manner, could not be fixed for rebuttal evidence of the plaintiff, if any, and/or for arguments. Meaning thereby, despite having framed of the issue, no opportunity would be availed by the defendant, in view of this order, to lead evidence to prove forgery of the pronote in question.

Be it noted that the order of framing of the additional issue, as such, was also not challenged by the respondent-plaintiff.

In view of the aforesaid fact situation, the impugned orders dated 29.01.2024 and 15.04.2024, warrant interference, by exercise of revisional jurisdiction. As such, the order dated 29.01.2024 is hereby set aside. Likewise, the order dated 15.04.2024, is partly set aside, only to the effect that case ought not to be fixed for rebuttal evidence and for arguments, as observed by the trial Court. However, fresh opportunity shall be given to the petitioner-defendant, to lead evidence, vis-a-vis, additional issue framed by the Court and further also, equal opportunity, ought to be given to the respondent-plaintiff, to rebut the same.

In view of the aforesaid terms, both the revision petitions stand allowed.

January 30, 2025
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE
Yes
Yes/No