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

CR-6576-2023 (O&M)
Date of decision: 03.05.2025

Hitesh Bansal

...Petitioner

Versus

Neelam Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Krishan Kumar Chahal, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside/modifying the order dated 09.08.2023 passed by the Additional Civil Judge (Senior Division), Hisar vide which application filed by the plaintiff/respondent for reframing issue No.1 was dismissed, however an additional issue i.e., issue No.1A was framed and the defendant/petitioner was directed to first lead evidence over the additional issue.

2. Learned counsel for the petitioner has submitted that in the present case, since the suit had been filed by the plaintiff-respondent thus, it was incumbent upon the plaintiff to first prove her case by leading evidence and it is only thereafter that the defendant should have been called upon to prove his defence. It is submitted that application filed in the present case by the plaintiff was only for reframing of issue No.1, which aspect had been



rejected by the trial Court but after rejecting the said aspect, the trial Court had framed additional issue No.1A, although no specific prayer with respect to framing of the said additional issue No.1A was made by the respondent-plaintiff. Learned counsel for the petitioner has further submitted that a perusal of the plaint would show that in para 3 of the plaint, the plaintiff had made reference to return of a sum of Rs.3,00,000/- by the petitioner/defendant on 28.03.2012 and also with respect to defendant paying compound interest at the rate of 12% per annum and had not stated that any other amount had been paid by the petitioner to the mother-in-law of the plaintiff. It is submitted that whereas the defendant/petitioner in the written statement had taken a specific plea that the entire amount of loan had been repaid and on 21.04.2019, an amount of Rs.5,00,000/- was paid by the defendant to Pushpa Devi Gupta and balance amount of Rs.7,35,000/- was also paid by the defendant/petitioner to Pushpa Devi Gupta on 18.05.2019. It is submitted that the said amount included the aspect of interest and the entire amount due to the deceased Pushpa Devi Gupta by the petitioner had been paid to her and it is for the said reason that she did not file any suit although she had died on 05.05.2021 i.e., after almost a period of two years from the date of complete payment. It is submitted that in the said circumstances, the impugned order is against law and deserves to be set aside and it is the respondent-plaintiff who should first be directed to lead evidence in support of her suit in terms of Order 18 Rule 1 CPC.

3. Learned counsel for the respondent, on the other hand, has opposed the present revision petition and has submitted that impugned order had been rightly passed and has further submitted that once the petitioner in



his written statement had admitted the fact that loan had been taken by him and his plea was that loan had been returned on specific dates with respect to specific amount, then in the said circumstances, it is the petitioner-defendant who should first lead evidence to show that the amount has been returned. It is submitted that in the said circumstances, the impugned order has been rightly passed and deserves to be upheld.

4. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. A perusal of the plaint (Annexure P-1) would show that the respondent-Neelam Gupta had filed a suit for recovery of Rs.17,25,051/- along with compound interest at the rate of 12% per annum from 01.04.2022 till actual realisation by creating charge and sale of SCF No.47, Commercial Urban Estate-II, Hisar, Plot No.165, Sector 27-28, Hisar owned by defendant and ½ share of defendant in Plot No.43, Sector 27-28, Hisar against the defendant/present petitioner-Hitesh Bansal. In the said suit, it was specifically averred that the defendant/petitioner had taken a business loan/commercial loan of Rs.20,00,000/- from late Smt. Pushpa Devi Gupta through four cheques issued from her account maintained with the Indian Overseas Bank, Hisar on compound interest at the rate of 12% per annum. The details of four cheques along with amount were mentioned in para 2 of the plaint. In the plaint, it was further mentioned by the plaintiff that defendant had returned a sum of Rs.3,00,000/- on 28.03.2012 towards loan



by sending it through RTGS in the Indian Overseas Bank account of late Smt. Pushpa Devi Gupta and had further stated that defendant/petitioner had been paying compound interest at the rate of 12% per annum through RTGS till 31.03.2019 after deducting income tax at source. In further support of this plea, averments were made to the effect that both the defendant as well as Pushpa Devi Gupta were Income Tax Payees and were maintaining regular accounts and that as on 31.03.2022, an amount of Rs.17,25,051/-, details of which were given in the statement of account, was due from defendant/petitioner and the said amount was required to be returned by the defendant along with interest at the rate of 12% compounded annually. Reference in the plaint was also made to the registered notice stated to have been sent by the plaintiff through her counsel on 21.03.2022 and also the fact that the petitioner/defendant did not give any reply in spite of the receipt of notice. Accordingly, the suit was filed.

6. In the written statement (Annexure P-2) filed by the petitioner, the fact that the defendant had borrowed a sum of Rs.20,00,000/- from Smt. Pushpa Devi Gupta was admitted. Specific stand was taken by the petitioner/defendant in the written statement to the effect that in March, 2019, the said Pushpa Devi Gupta demanded the balance amount and that same was paid by the petitioner/defendant. The details of the payments were also given and it was stated that a sum of Rs.5,00,000/- in cash was paid to Pushpa Devi Gupta on 21.04.2019 and the balance amount of Rs.7,35,000/- was also paid in cash to Pushpa Devi Gupta by the defendant on 18.05.2019 and the said amount included the principal as well as the interest amount and that nothing was due to the said Pushpa Devi Gupta from the side of the defendant.



7. The trial Court, vide order dated 27.03.2023, framed the following issues:-

“1. Whether the plaintiff is entitled to recovery of Rs.17,25,051/- along with compound interest @12% per annum from 01.04.2022 till actual realization as prayed for? OPP.

*2. Whether the suit of plaintiff is not maintainable in the present form? **OPD.***

*3. Whether the suit of plaintiff is hopelessly time barred? **OPD.***

*4. Whether the plaintiff has no locus standi or cause of action to file the present suit? **OPD.***

*5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? **OPD.***

*6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? **OPD.***

7. Relief.”

8. On 09.05.2023, the plaintiff had moved an application for reframing of issue No.1 and in the said application, it was stated that since the defendant-petitioner had admitted the receipt of loan of Rs.20,00,000/- in his written statement and had raised a specific plea regarding repayment thus, issue No.1 deserved to be modified and needed to be framed as under:-

“(i) Whether the defendant has repaid the loan amount by paying Rs.5 lacs on 21.04.2019 and Rs.7,35,000/- on 18.05.2019 as alleged OPD.”

9. It was further stated that after reframing of the issue, burden of the same should be placed upon defendant-petitioner who would lead evidence first. The said application was opposed. The trial Court, vide impugned order dated 09.08.2023, had observed that although, the issues which have been framed did not call for any interference but an additional



issue i.e. issue No.1A was required to be framed in the present case. The said issue No.1A, is reproduced hereinbelow:-

“Issue No.1A

Whether the defendant has repaid the loan amount qua which the present suit for recovery has been filed? OPD ”

10. The trial Court had opined that since the petitioner/defendant had in his written statement admitted the factum of borrowing of Rs.20,00,000/- from Pushpa Devi Gupta and had specifically stated that he had repaid the whole amount thus, the petitioner/defendant must lead evidence first. While doing so, learned trial Court had observed that since the defendant had admitted the facts with respect to the loan having been taken and had alleged an additional fact to the effect that he had repaid the loan thus, in such a situation, as per the settled procedure, defendant had to first lead his evidence. It was further observed that leading of the evidence by the defendant in the present case would help in substantially deciding the case, as, in case the burden of repayment of the admitted loan is discharged by the defendant/petitioner, then, onus on the plaintiff for recovery would no more arise. The argument raised on behalf of the defendant to the effect that in case the defendant was ex parte, then the plaintiff would have to lead evidence to prove her case, was rightly answered in para 10 of the impugned order. Para 10 of the said impugned order is reproduced hereinbelow:-

“10. Counsel for the defendant argued that if the defendant was proceeded ex parte then the plaintiff would have to lead evidence to prove her case. There is no doubt about this argument and that is why the issue has not been re-framed since the burden of the plaintiff must be kept alive but merely in view of the admission of defendant, the additional issue has been framed



and the initial onus placed on the defendant. If the defendant goes exparte, the issue already framed would creep in the front and keep the plaintiff's case alive and compel him to discharge his burden for a judgment in her favour. Moreover, if the issue no.1 is re-framed only legal issues would stay alive which would deprive the plaintiff of any burden which is not the intention of law.”

11. The order of the trial court is in accordance with law and deserves to be upheld. Order 18 Rule 1 CPC specifically provides that it is the plaintiff who has the right to begin unless the defendant admits the fact alleged by the plaintiff and contends 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. In the present case, a perusal of the issues framed, as have been reproduced hereinabove, would show that onus on all the issues is on the defendant except issue No.1. Issue No.1 is with respect to plaintiff being entitled to recovery of Rs.17,25,051/- along with compound interest at the rate of 12% per annum. The basis for claiming the said amount is loan of Rs.20,00,000/- which was stated to have been given by Pushpa Devi Gupta, predecessor-in-interest of the plaintiff, to the defendant vide four cheques. Once the defendant had admitted the factum of loan having been taken and had taken an additional plea that he had returned the loan by making payments on 21.04.2019 and 18.05.2019, then, in such a situation, it would be necessary to first direct the defendant/petitioner to prove the said aspect and the trial thereafter would depend upon whether the petitioner/defendant was able to prove the said aspect of repayment. Valid reasons have been



given by the trial Court for not reframing the issue and for framing the additional issue.

12. The argument raised on behalf of learned counsel for the petitioner, to the effect that once no prayer was made for framing of the additional issue then same could not have been framed, is misconceived, inasmuch as, a perusal of Order 14 Rule 1(5) read along with Order 14 Rule 5 would show that it is the duty of the Court, after reading the plaint and the written statement etc., to ascertain as to on what material propositions of fact or of law the parties are at variance and is then required to frame the issues. Under Rule 5, the Court has power to amend the issues or frame additional issues, at any time before passing the decree, on such terms as it thinks fit and all such additional issues, as are necessary for determination of the matters in controversy between the parties, shall be so framed. From reading of the pleadings of the parties, issue with respect to defendant having repaid the amount was necessarily required to be framed, which was not framed on 27.03.2023, thus, the trial Court had rightly framed the said additional issue No.1A and it was within its competence to frame the said issue. Even onus on the said issue had been rightly placed upon the petitioner/defendant.

13. The Hon'ble Supreme Court in the case of **"Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil"**, reported as **(2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said



judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

14. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

03.05.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No