

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

2025.PHHC.007799



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CR-7308-2024 (O&M)

Date of decision: 20.01.2025

Kamalpreet Kaur

...Petitioner.

Versus

Prem Kumar (since deceased) through LRs and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. L.S. Mann, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 20.09.2024 (Annexure P-6), passed by the trial Court, vide which application filed by the petitioner under Order 6 Rule 17 CPC, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the petitioner/ plaintiff filing a suit for recovery under Order 7 Rule 2 CPC for an amount of Rs.2,72,000/- i.e. Rs.2,00,000 as principal amount and Rs.72,000/- as interest @ 1% per month from the period of 09.04.2020 to 08.04.2023, with the averments that deceased Prem Kumar had good acquaintance with the petitioner and he on behalf of respondent No.2 borrowed an amount of Rs.2,00,000/- from the petitioner/

plaintiff. It was alleged that after death of Prem Kumar, his LRs are jointly severally legally responsible/ liable to return the cheque amount to plaintiff. Defendant No.2 i.e. firm belongs to deceased Prem Kumar and now it is being running by LRs of Prem Kumar. It was alleged that in the month of April, 2020, plaintiff asked defendant No.1 to return the said interest free amount taken by defendant No.1 on behalf of defendant No.2 and on regular demands of plaintiff, to discharge legally enforceable liability, defendant No.1 issued cheque No.031765 dated 09.04.2020 of Rs.2,00,000/- in favour of the plaintiff and defendant No.1 assured that it would be encashed on presentation. When the same was presented, the said cheque was dishonoured and received back unpaid alongwith memo dated 15.04.2020 with the remarks 'funds insufficient' meaning thereby that defendant was not having sufficient funds in his bank account for encashment of the cheque issued by defendant to the plaintiff. It was further alleged that the plaintiff disclosed defendant No.1 about the fate of cheque and defendant No.1 requested the plaintiff not to take legal action and requested him to give some days to arrange the money. Accepting his request, plaintiff did not take any legal action against him. Thereafter, defendant No.1 kept on putting off the matter on one pretext or the other, but failed to make payment of the aforesaid amount to the plaintiff. Plaintiff repeatedly approached and requested many times defendant No.1 during his life time and then LRs of defendant No.1 to repay the amount and to admit the claim of the defendant but to no effect. Hence, the present suit was filed.

3. Upon notice, respondent appeared and filed written statement alleging that son of the petitioner used to accompany deceased Prem Kumar

and he might have stolen some cheque leaves from his bag when he was alive.

4. From the pleadings of the parties issues were framed on 21.02.2024.

5. After that the application, under Order 6 Rule 17 CPC for amendment of the plaint was moved by petitioner alleging that due to oversight and typographical error in the first line of para No.3 of the plaint, month 'April 2020' has been wrongly typed instead of 'April 2019' and further in line 4 of para No.3 of the plaint, the word 'post dated' was inadvertently not added after the word 'a' and before the word 'cheque' and likewise, in para No.11 of the plaint, the date '09.04.2020' has been wrongly typed in place of 'April 2019'.

6. Reply to the said application was filed by respondents/defendants on 02.07.2024. Said application was dismissed vide order dated 20.09.2024 passed by the trial Court. Aggrieved against the same, the petitioner has knocked the doors of this Court by way of filing the present revision petition.

7. Learned counsel for the petitioner has contended that the reason given for rejection by the trial Court that the petitioner was having opportunity to rectify his mistake earlier and the amendment if allowed may frustrate the objection of limitation taken by the respondents. He has contended that it was the mistake on the part of the counsel which resulted into necessity of filing the present application and on account of mistake of the counsel, the petitioner should not be made to suffer. He has also argued that the amendment if allowed is not going to change the nature of the suit

and is necessary to bring the facts in consonance with each other. He also urged that it is well settled law that at the time of allowing an amendment merits of the case are not be touched and as such the proposed amendment will not frustrate the objection of limitation taken by the respondents. He has submitted that the impugned order is wrong, illegal, unjust and against equity and is liable to be set aside and has prayed that present revision petition be allowed and application under Order 6 Rule 17 CPC filed by the petitioner may also be allowed. In support of his contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Varun Pahwa Vs. Mrs. Renu Chaudhary,** civil appeal No.2431 of 2019, decided on 01.03.2019 and **Ragu Thilak D. John Vs. S. Rayappan,** civil appeal No.787 of 2001, decided on 23.01.2001.

8. I have heard learned counsel for the petitioner and has gone through the relevant record.

9. By way of the proposed amendment, the petitioner wants to amend the year mentioned as 'April 2020' in paragraph 3 of the plaint with 'April 2019', and in the 3rd paragraph itself he wants to add the word 'post dated' before the word 'cheque' and likewise, in para No.11 of the plaint wants to mention date as 'April 2019' instead of '09.04.2020'.

10. Written statement was filed in this case on 29.09.2023. Thereafter, despite the several adjournment no amendment was sought. Issues were framed on 21.02.2024 and even thereafter, on two occasions of adjournment, no amendment was sought. Trial Court has observed that as per proviso appended to Rule 17 of Order 6, no application for amendment shall be sought after the trial has commenced, unless the Court comes to the

conclusion that in spite due diligence, the party could not raise the matter before the commencement of trial. Trial Court has observed that in the instant case, the plaintiff has failed to show due diligence on his part, therefore, amendment is not permissible. It has also been observed that nature of amendment sought is such that the same is not only going to change material facts but also likely to frustrate the objection of limitation taken by respondents in their written statement.

11. From the perusal of record, it emerges that even if the proposed amendment as sought by the petitioner/ plaintiff is allowed even then the facts of the plaint are contradictory. As per para No.5 of the plaint, plaintiff disclosed defendant No.1 about the fate of cheque and defendant No.1 requested the plaintiff not to take legal action and requested him to give some days to arrange the amount. This is an admitted fact that defendant No.1 Prem Kumar had died on 17.08.2019. As per the record and pleadings, the cheque issued by defendant No.1 was dishonored and received back unpaid along with memo dated 15.04.2020 with remarks 'Funds Insufficient' meaning thereby that the cheque allegedly issued by deceased Prem Kumar was dishonored on 15.04.2020. So when Prem Kumar died on 17.08.2019, then as per pleadings in para No.5 of the plaint, plaintiff could not have disclosed to defendant No.1, who was already dead by that time, about the fate of cheque and could not have requested a dead person not to take legal action and grant him some days to arrange the amount. Thus, the plaint filed by the petitioner appears to be contradictory. By way of the proposed amendment, the petitioner wants to introduce altogether new facts which are not in consonance with para No.5 of the

plaint and qua para No.5 of the plaint no amendment has been sought.

12. The case law cited by learned counsel for the petitioner is also of no help to the petitioner, being based on distinguishable facts.

13. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

20.01.2025

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No