



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

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1. Civil Revision No.1368 of 2025 (O&M)
2. Civil Revision No.1369 of 2025 (O&M)

Date of decision: March 18th, 2026

Pankaj Sharma and another

.....Petitioners

Versus

Vikash Kumar Karawal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Prateek Sodhi, Advocate
for the petitioners.

None for the respondents.

VIKAS BAHL, J. (ORAL)

1. The present order would dispose of two civil revisions filed by the same petitioners, who are defendants No.2 and 3 in the main suit and have challenged two separate orders passed in the same suit. In Civil Revision No.1369 of 2025, the petitioners have challenged the order dated 15.02.2025 (Annexure P-7), whereby the application filed by the petitioners under Order VI Rule 17 CPC for amendment of the written statement has been dismissed. In Civil Revision No.1368 of 2025, the petitioners have challenged the order dated 28.01.2025 (Annexure P-6), whereby the application filed by the petitioners under Section 65 of the Indian Evidence Act for permission to lead secondary evidence has been dismissed.

2. Learned counsel for the petitioners has submitted that in the present case, respondent No.1 had filed a suit for recovery and in the written statement filed by the petitioners along with defendant No.4, apart

from other objections, an objection was taken that the plaintiff and defendant No.2-Pankaj Sharma and his brother were close friends and the plaintiff had taken undue advantage of their friendship. It is submitted that by moving the application for amendment, the petitioners wish to elaborate the said plea by giving the details with respect to the misuse of the said friendship. It is submitted that the amendment sought is in the form of elaboration of the plea already taken in the original written statement and the petitioners are not withdrawing any admissions made in the original written statement. It is further submitted that reference in the application for amendment has been made to certain documents which had already been put to the plaintiff, who had been examined as PW-1 and are already a part of the record. It is submitted that in the said circumstances, the application for amendment should have been allowed, as the amendment sought is necessary for proper and final adjudication of the case. In support of his arguments, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Anr.*** reported as ***2022 LiveLaw (SC) 729***.

3. Learned counsel for the petitioners has further submitted that certain relevant documents were put to PW-1/plaintiff in order to prove the plea of the petitioners in the written statement to the effect that the plaintiff had taken undue benefit of the friendship between the plaintiff and defendant No.2 and had misused the documents of the firm of defendants No.2, 3 and 4 by the name of M/s Saraswati Trading Corporation. It is submitted that the said documents includes the

document which would show that the plaintiff had on behalf of Saraswati Trading Company dealt with third party Varun Beverages, which further the defence of the petitioners to the effect that the plaintiff had been using the name of the firm as well as the firm's account number for doing business with a third party. It is submitted that it is a matter of settled law that there is no requirement to move an application for secondary evidence and it is the right of the party to lead all evidence and produce all documents and the question as to whether the documents have been proved in accordance with Section 65 of the Indian Evidence Act is to be considered only at the final stage after all the parties have been permitted to lead their entire evidence in support of their case. In support of his arguments, learned counsel for the petitioners has relied upon the judgment of the coordinate Bench of this Court passed in the case of *Madan Lal Versus Shankar and others* reported as **2021 (2) PLR 130**. It is further submitted that it is the plea of the petitioners that the documents which are sought to be produced and proved on record by the petitioners are in fact in possession of the plaintiff and thus the case of the petitioners is covered under sub-clause (a) of Section 65 of the Indian Evidence Act. It is submitted that at any rate, an opportunity should be given to the petitioners to prove the said documents and their defence. It is further submitted that for the inconvenience caused to the respondent No.1, the petitioners are ready to pay reasonable costs.

4. On 05.03.2025, this Court was pleased to pass the following order:

Present:- Mr. Prateek Sodhi, Advocate, for the petitioners.

Inter alia, contends that in the present case, the issues were framed on 27.10.2023 and the plaintiff evidence was concluded on 08.01.2025 and the first date for the evidence of the defendants was 17.01.2025, on which date the petitioner moved an application under Section 64 of the Evidence Act seeking permission to lead secondary evidence with respect to documents Mark D-1 to D-11, however, the same was rejected vide order dated 28.01.2025 primarily on the ground that the said documents were not pleaded in the written statement. It is submitted that immediately thereafter the petitioner moved an application under Order 6 Rule 17 CPC, which was also rejected vide order dated 15.02.2025.

Notice of motion for 20.03.2025.

Notice re: stay as well.

Liberty is granted to the petitioner to serve the respondents through dasti process as well as through the counsel appearing for them before the trial Court.

The trial Court is directed to proceed with the proceedings but the final order be not passed.

A photocopy of this order be placed on the file of other connected case.

March 05, 2025”

5. On 24.03.2025, on the basis of the report of the Registry, it was observed that the respondents had been served, however, none had appeared on their behalf. Thereafter, the case was taken up on 15.07.2025, 06.11.2025 and today, however, no one has appeared on behalf of the respondents to oppose the revision petitions filed by the petitioners.

ANALYSIS AND FINDINGS:

6. This Court has heard learned counsel for the petitioners and has perused the paper book of both the cases and is of the opinion that the impugned orders deserve to be set aside and both the revision

petitions deserve to be allowed, subject to certain directions, for the reasons which have been detailed hereinafter.

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7. A perusal of the original written statement filed by defendants No.2 to 4 would show that the petitioners had taken the plea that the plaintiff and defendant No.2-Pankaj Sharma and his brother were close friends and that the plaintiff had taken undue advantage of this friendship and had misused the documents of the firm M/s Saraswati Trading Corporation with an intent to make wrongful gains. The petitioners had moved an application for amendment, the copy of which has been annexed as Annexure P-4 along with CR No.1369 of 2025, by virtue of which the petitioners wish to add para No. 14 after para No.13 of the preliminary objections. The para which the petitioners seek to add is reproduced hereinbelow:

“Para No.14.

That the answering defendants neither borrowed any amount from the plaintiff as alleged by the plaintiff as mentioned in the plaint nor issued any cheques in favour of the plaintiff. In fact, Vinod Kumar Sharma @ Bobby brother of defendant Pankaj Sharma and plaintiff were doing private job and were colleague in Tara Automobile, Abohar and both were close friend from college time, due to the above the plaintiff and family of the Pankaj Sharma defendant having good relation with each others and blind faith upon each other. It is submitted that the plaintiff wanted to start the business of sale and purchase of beverages products. So, the plaintiff approached concerned person/ official of Varun Beverages, Jalandhar for sub-dealership of Pepsi Brand products and the plaintiff succeeded to obtain sub dealership at Fazilka and for this purpose, the plaintiff approached to the defendant for using the firm of

defendants for his above business and the plaintiff wanted to manage the bank account of the defendant firm for starting and doing the above business of the plaintiff in name of defendant firm. Due to good / cordial relation with each others, the defendant agreed to help the plaintiff by handing over cheque books of the defendants firm to the plaintiff and allowing him to do his business of above beverages in the name of defendant firm. Thereafter on 17.04.2017 the plaintiff taken shop on rent for above business at Fazilka from Pawan Bhateja Son of Amar Chand and rent note was duly executed between the plaintiff and above Pawan Bhateja in presence of witnesses, which was typed by Raj Kumar typist Fazilka and was entered and attested by the Notary Public, Fazilka. Sh. Niranjana Singh Minhas, Advocate. It is submitted that the bank account of the defendant firm was fully managed by the plaintiff and the plaintiff used to transfer/deposited the money from his account to the account of defendant firm for payment of purchased Beverages products from different dealers of Beverages on same day or the next day the said deposited amount transferred to account of the above dealers. All the beverages products were purchased and sold by the plaintiff himself with his own signatures through valid bills. Bill Books were also printed by the plaintiff under his own name and mobile number and name and mobile number of Jaideep son of Khiali Ram, who is close friend and relative of the plaintiff and were also partner/ employee in the above business. After lapse of time, the plaintiff become dishonest and greediness prevail in his mind for achieving his ulterior motive and the plaintiff taking undue advantage of the bank entries and blind faith of the defendants, the plaintiff filed the present suit with Intent to wrongful gain. The relevant record and witnesses fully prove the true facts of the case that the suit of the plaintiff is false, frivolous and filed with intent to wrongful gains.”

8. A perusal of the above would show that the petitioners have elaborated their plea which had been taken earlier in the original written statement and have given the details as to how the plaintiff had misused the documents so as to substantiate his case. No admission made by the petitioners earlier has been withdrawn. A perusal of the impugned order dated 15.02.2025 vide which the prayer for amendment was dismissed by the trial Court would show that the documents which are now sought to be mentioned in the para to be incorporated, were already put to the plaintiff in his cross-examination and thus, the said documents were already on record. The primary ground for rejection of the application amendment was delay. Although there was delay in moving the application, inasmuch as, the earlier written statement was filed on 05.04.2023 and the application for amendment had been filed on 15.02.2025 but the said amendment is necessary for the proper and final adjudication of the case and would meet the parameters laid down by the Hon'ble Supreme Court in the case of *Life Insurance Corporation of India (supra)*, as in the said judgment the Hon'ble Supreme Court had observed that a prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties and to avoid multiplicity of litigation. In the present case, this Court is of the opinion that the amendment is necessary for proper and effective adjudication of the case. The exceptions mentioned in the said judgment do not arise in the present case as the petitioners do not seek to withdraw any admission made by them nor do they give rise to a time barred claim nor does the amendment cause injustice to the other side rather non-

allowance of the amendment would cause injustice to the petitioners. The Hon'ble Supreme Court had further observed in the said judgment that while dealing with a prayer for amendment of the pleadings, the Court should avoid hypertechnical approach and is ordinarily required to be liberal, more so, when the other party can be compensated by cost.

9. The Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.*** reported as ***2006(2) RCR (Civil) 577*** had observed that all the amendments which are necessary for determining the main question in controversy between the parties should be allowed and at the stage of allowing the amendment, the merits of the amendment are not required to be considered. The relevant portion of the said judgment is reproduced hereinbelow:-

“13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.”

10. Learned counsel for the petitioners has stated that the case is fixed for the evidence of the petitioners and as per the last order, the matter was referred for mediation.

11. Keeping in view the abovesaid facts and circumstances, this Court is of the view that Civil Revision No.1369 of 2025 deserves to be allowed and the impugned order dated 15.02.2025 deserves to be set aside and the application filed by the petitioners for amendment deserves to be allowed subject to the petitioners paying an amount of ₹10,000/- as cost to respondent No.1.

12. Ordered accordingly.

13. The said amount would be deposited by the petitioners within a period of two weeks from today and on depositing the same, the same would be released to respondent No.1. It is made clear that in case the said amount is not deposited, the present revision petition would be deemed to have been dismissed. Since the plaintiff has led his entire evidence, after the amendment is allowed, it would be open to the petitioners to lead their entire evidence and respondent No.1-plaintiff would be granted liberty to rebut the entire evidence led by the petitioners, irrespective of whether the onus of a particular issue is on

the plaintiff or on the defendants since the plaintiff would have led his evidence unmindful of the details in the amended written statement.

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14. With respect to challenge to the order dated 28.01.2025 vide which the application for leading secondary evidence which is subject matter of challenge in CR No.1368 of 2025, it would be relevant to note that as per the law laid down by the coordinate Bench of this Court in the case of ***Madan Lal (supra)***, it was observed that there is no requirement to seek prior permission of the Court before leading secondary evidence, although a practice has developed to seek prior permission before leading secondary evidence. However, the said practice is not supported by any statutory provision and, therefore, merely because prior permission has not been sought, the evidence which has come on the file in the form of secondary evidence cannot be ignored, if it fulfills the requirement of Section 65 of the Indian Evidence Act. The relevant portion of the said judgment is reproduced hereinbelow:

*“13. As regards the requirement of prior permission to produce secondary evidence, it may be noted that Chapter V of the Indian Evidence Act, 1872 provides that the party is required to produce primary evidence. However, Section 63 provides for and defines the secondary evidence in absence of primary evidence. Section 65 of the Indian Evidence Act, deals with the circumstances under which the secondary evidence can be led. The distinction between the primary evidence and secondary evidence is nature of evidence. **In absence of primary evidence, secondary evidence can be examined by the Court subject to fulfillment of the requirements of Section 65 of the Indian Evidence Act. There is no requirement that before leading secondary evidence,***

prior permission of the Court is required to be obtained. No doubt, a practice has developed to seek prior permission to lead secondary evidence and granted/refused by the Courts, however, this practice is not supported by the statutory provision. Therefore, merely because a prior permission has not been sought, the evidence which has come on file in the form of secondary evidence cannot be ignored, if it fulfills the requirement of Section 65 of the Indian Evidence Act.

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17. This Court has come across various judgments passed by the Courts wherein different High Courts have taken a view that prior permission to lead secondary evidence is not required and the evidence so led by the party can be in the nature of primary evidence or secondary evidence. Even if it is assumed that formal permission is required, that can be granted by the Court while examining and evaluating the evidence. The practice of seeking prior permission by moving an application to that effect results in unnecessary delay of the trial. If the application is accepted or rejected, the order so passed by the trial Court is further challenged before the Higher Court which again results in delay of the trial. Such delay can be very well avoided by the Courts by examining the evidence and granting permission if required after satisfying that requirements of Section 63 and Section 65 of the Evidence Act stand complied with. Reference in this regard can be made to two judgments of the Delhi High Court, first, 2009 (32) RCR (Civil) 54, Sanyogta Prakash V. Dhira Bala Malhotra and others, second, 2009 (12) RCR (Criminal) 701, Prem Chandra Jain (deceased) represented by LRs Shri Bharat Bhushan Jain, Advocate and others V. Sri Ram (deceased) represented by LRs Shri Sunil Kumar Arora and others, the judgment passed by the Allahabad High Court in the case of Hameed and others V. Kanhaiya, 2004 AIR (Allahabad) 405. Reference in this regard can also be made to the judgments of this Court in

the case Harjinder Singh V. Ranjit Kaur and others, 2016 (3) RCR (Civil) 229, Rajesh Yadav and others V. Balbir Singh and others 2014 (5) RCR (Civil) 941, Harbans Kaur and others V. Beant Kaur and others 2014 (9) RCR (Civil) 3009, Anupam Jain wife of Rakesh Jain V. Kubwant Gupta wife of Surinder Kumar and others 2016 (3) RCR (Civil) 220”

15. As has been stated hereinabove, from the perusal of the order dated 15.02.2025 vide which the application under Order VI Rule 17 CPC filed by the petitioners was dismissed, it is apparent that said documents had already been put by the petitioners to the plaintiff in his cross-examination and thus, they are already on the record. In the said circumstances, by dismissing the application filed by the petitioners for secondary evidence, the Court is excluding the consideration of the said documents, without considering the entire evidence in totality. It is the case of the petitioners that the said documents are very relevant, inasmuch as, the said documents show that the plaintiff has used the name of the firm M/s Saraswati Trading Corporation for dealing with third parties including Varun Beverages. It is open to a party to lead evidence and to produce documents in support of his plaint and it is also open to the opposite party to raise all objections qua the admissibility, relevancy etc. of the said documents and after due opportunities are given to both the parties to lead all evidence in the said regard, the Court can consider all the aspects including the aspect as to whether the parameters of Section 65 of the Indian Evidence Act (Section 60 of BSA, 2023) have been met with at the time of final adjudication.

16. Keeping in view the abovesaid facts and circumstances, CR No.1368 of 2025 is allowed and the order dated 28.01.2025 is set

aside with a clarification to the effect that the petitioners are permitted to lead all evidence in support of the documents which are already on the record of the trial Court. It would be open to the petitioners to argue at the stage of final arguments that the said documents have been duly proved and the parameters mentioned under Section 65 of the Indian Evidence Act (now Section 60 of BSA, 2023) are duly met. It would also be open to respondent No.1-plaintiff to raise all objections in accordance with law and all the said aspects would be considered, at the stage of final arguments, by the trial Court.

17. Pending applications, if any, stand disposed of.

March 18th, 2026
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes