

(2002) 04 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1759 of 2002

Sameer Kaushal L.R. of Sh. Amar

Nath Sharma (Died)

APPELLANT

Vs

Capt. Parminder Singh and

Others

RESPONDENT

Date of Decision: April 3, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2002) 3 CivCC 152 : (2002) 3 RCR(Civil) 58

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Rajinder Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is a revision petition directed against the order dated 8.2.2002 passed by the Additional Civil Judge (Sr. Divn.), Kharar allowing the application of the defendants/respondents for amendment of the written statement. The trial court allowed the application by recording the following order;

"Perusal of the file shows that the plaintiff has filed the suit for recovery against the defendants. As per the allegations of the plaintiff he advanced a loan of Rs.3,00,000/- to the defendant No.1 and this amount of Rs.3 lacs was paid to the defendant No.1 through cheque. In the written statement filed by the defendants, it is alleged that a sum of Rs.2,80,000/- had already been paid in separate instalments in the presence of Ashok Kumar and Madan Lal son of Jain Ram and others. Now, through the proposed amendments the defendants want to allege that before figure Rs.2,80,000/- the word "approximately" is to be added, in my opinion if the defendants wants to add the word "approximately" before the figure 2,80,000/- no

prejudice or harm is going to be caused to the plaintiff and in line 3rd of the written statement if the defendants was to insert the word "and others" after word Jai Ram, even then no hard or prejudice is going to be caused to be plaintiff because the defendants have yet to start their evidence and if they are alleging anything in the written statement, then they are to prove the same. Moreover, the plaintiff will have the fair opportunity to cross-examine the witnesses of the defendants and if in place of 1993 defendants wants to change with the year 1994 then that it is not going to make much difference because the defendant has yet to lead their evidence and again at the cost of repetition. I would like to say that whatever the defendants want to lead it is their "duty to prove same and the plaintiff will have the fair opportunity to cross-examine the witnesses of the defendant. If the defendants wants to omit the words and amount from line 3rd and 6th of the written statement of Para No.2 even then no harm is going to be caused to the plaintiff because all these facts are to be proved by the defendants. Further the defendants by way of amendments wants to omit the words no such affidavit was ever executed in 6th line of para No.2 of written statement and in its place it should come that "however the affidavit mentioned in this para was executed and got attested on 11.3.1994 but the plaintiff had forged the date on it and changed the same 11.2.1994 to 17.3.1994 under the signature of C. Parshad Advocate and introduced another fake witness Yoginder Singh Kanwar who was not present at the time of execution and attestation of the affidavit.

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Moreover the amendments which the defendants are seeking are only a sort of clarification and further more, the defendants have yet to lead his evidence and whatever they want to lead by way of amendment they are required to prove the same by leading evidence and in these circumstances, the plaintiff will have an opportunity of cross-examining the witnesses of the defendants and in this way even if these amendments are sought at a later stage, that is not going to cause any harm to the plaintiff. If any law matter is introduced by the defendants by way of amendment, then the plaintiff will have the fair opportunity to rebut that by way of leading rebuttal evidence also. It is always desired that all those facts and circumstances should come on record which help in solving the controversy between the parties. Mere technicalities of law should not come in the way. During the course of arguments, the learned counsel for plaintiff argued that the predecessor of plaintiff had already filed a criminal complaint u/s 138 of Negotiable Instruments Act against the defendant and in that complaint, the present defendant, who is accused has stepped into the witness box as witness and while being cross-examination he admitted certain facts. Now in order to wriggle out of the admission made in those proceedings the defendants have filed the present application. In my opinion, at this stage, the court is not going to enter into this

controversy as argued by the teamed counsel for plaintiff because what is the evidential value of the statement of a person etc. all these things would be determined at the time of final arguments and while disposing of the application under Order 6 Rule 17 CPC the Court is not supposed to enter into such like matters. Therefore, in the interest of justice, the proposed amendments are allowed, subject to payment of cost of Rs. 1000/- Accordingly, the application under Order 6, Rule 17 CPC dated 28.5.2001 is disposed off."

2. I have heard Mr. Rajinder Sharma, learned counsel for the petitioner who has argued that the amendments have been sought for collateral purpose of seeking benefits in criminal proceedings pending u/s 38 of the Negotiable Instruments Act, 1881 and also amendments are contradictory to the stand taken by the defendant-respondents in their earlier written statement. However, from the perusal of the proposed amendment as it clear from Para (a) (b) that the amendments are mostly formal in nature and are not contrary to the stand taken by the defendant-respondents in their earlier written statement. For example, the amendment proposed in para 1 is as under;

"That this para is correct to the extent that the defendant No. 1 took a sum of Rs.3 lakhs as loan the rest of the para is wrong hence denied. The plaintiff has not given the correct particulars of the alleged cheques No. date of the cheque has been given. The suit of the plaintiff is clearly time barred. The defendant never agreed to pay interest @ Rs. 3% per month as alleged.

Amended: 1. That this para No.1 of the plaint is correct to the extent that the defendant No.1 took a sum of Rs.3 lacs as loan the rest of the para is wrong, hence denied. The plaintiff has not given the correct particulars of the alleged cheques. No date of the cheque has been given. The suit of the plaintiff is clearly time barred. The defendant agreed to pay interest @ Rs.3% per month as alleged. The amendment proposed in para No.2 is as under: -

"That this para is wrong, hence denied. A sum of Rs.2,80,000/- has already been paid in separate instalments in the presence of Sh. Ashok Kumar and Madan Lal. The said cheque was issued in the year 1993 which was without date and amount. The plaintiff has forged the date and amount on the said cheque. Photocopy of the same is attached. No such affidavit was ever executed. The plaintiff was having blank stamp paper and the alleged writing might have been forged on the same. The payment was also admitted by the plaintiff where the parties gathered in a marriage in the presence of above said person.

Amended: 2: That this para is wrong, hence denied, A sum of approximately Rs.2,80,000/- had already been paid in separate instalments in the presence of Ashok Kumar and Madan Lal S/o J. Ram and others. The said cheque was issued in the year 1994 which was without date. The plaintiff has forged the date on the said cheque. Photo copy of the same is attached. However, the affidavit mentioned in

this para was executed and got attested on 11.3.1994 but the plaintiff had forged the date on it and changed the same 11.3.1994 to 17.3.1994 under the signature of C. Parshad, Advocate and introduced another fake witness Yoginder Singh Kanwar who was not present at the time of execution and attestation of the affidavit. The plaintiff was having blank stamp paper and the alleged writing might have been forged. The payment was also admitted by the plaintiff when the parties gathered in a marriage in the presence is above said person."

3. A perusal of the proposed amendments allowed by the Civil Judge would make it amply clear that the plaintiff-petitioner is unlikely to suffer any prejudice by permitting the amendment in the written statement filed by the defendants-respondents. The Supreme Court in *Prem Bakshi v. Dharam Dev* 2002 130 P.L.R. 558 (SC) has categorically observed that allowing the application under order VI Rule 17 of the Code permitting amendment of the pleadings would hardly cause any prejudice to the other party and therefore, unless it is shown that it would result into failure of justice no revision petition should be entertained. The observation of their Lordships reads as under:-

"The proviso to sub-sections (1) and (2) wish explanation was added by the amending Act of 1976. By this amendment the power of the High Court was curtailed. the intention of the legislature being that High Court should not interfere with each and every interlocutory order passed by the trial Court so that the trial of a suit could proceed speedily and that only the interlocutory order coming under Clause (a) (b) of the proviso would be entertained by the High Court."

4. Their Lordships also considered Clause (a) and (b) of the proviso as well as explanation to Sub-section (2) and observed as under;

"In [Major S.S. Khanna Vs. Brig. F.J. Dillon](#), this court considered the expression "any case which has been decided" in Sub-section (1) of Section 115 CPC and held that the expression case is a word of comprehensive import and includes civil proceedings other than suits and is not restricted by authority contained in the said section to the entirety of the proceedings in a civil court and to interpret the expression case as an entire proceedings only and a part of the proceedings would impose an unwarranted restriction on the exercise of powers of superintendence by the High Court. This view of the High Court has now been legislatively adopted by the parliament by introducing the explanation to Sub-section (1) of Section 115 CPC and, therefore, an interlocutory order is revisable u/s 115. but for exercising power under this Section by the High Court, the order must satisfy one of the conditions mentioned in Clause 9 (a) and (b) of the proviso. The proviso to Sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (1) the order made would have finally dispose of the suit or other proceedings or, (ii) the said order would occasion a failure of justice or cause irreparable injury to the party

against whom it is made. Under Clause (a), the High Court would be justified in interfering with an order of a Subordinate court if the said order finally disposes of the suit or other proceeding. By way of illustration we may say that if a trial Court holds by an interlocutory order that it has no jurisdiction to process the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and therefore, it would not come under Clause (a). Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No. 1. It is almost inconceivable how mere amendment of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party."

For the reasons recorded above, this revision petition fails and is dismissed.