

(2013) 11 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6675 of 2013

Mohkam Singh

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: Nov. 7, 2013

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Neeraj Gupta, for the Appellant;

Final Decision: Dismissed

Judgement

Paramjeet Singh, J.

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 04.10.2013 (Annexure P-3) passed by learned Civil Judge (Jr. Divn.), Kaithal whereby application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short "the Code") moved by the petitioner-defendant no. 1 for amendment of written statement has been dismissed. Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that respondent-plaintiff filed suit for recovery of Rs. 1,11,100/- including interest calculated upto 18.08.2010 along with pendente lite and future interest @ 11.75% per annum with monthly rests against the petitioner-defendant no. 1 and defendant no. 2-Civil Surgeon, General Hospital, Kaithal. When the suit was fixed for defendants" evidence, the petitioner-defendant no. 1 filed application under Order VI Rule 17 of the Code for amendment of written statement. The petitioner wants to take following preliminary objections in addition to preliminary objections in the original written statement:

4. That the suit of the plaintiff is bad for non-joinder of State of Haryana as necessary party.
5. That the plaintiff is guilty of suppressing true and material facts from this Ld. Court as such plaintiff is not entitled for any relief. The real facts are as under:-

- a) That the defendant did availed the loan facility to the tune of Rs. 1,25,000/- (Rs. one lac twenty five thousand only) from the plaintiff with a promise to return the loan amount alongwith interest.
- b) That the defendant retired from the services on 28.2.2006 and the plaintiff bank for the reason best known to them failed to deduct the loan (rest of loan) from the gratuity and G.P. Funds of the defendant as per terms and conditions of the loan agreement.
- c) That after retirement the defendant visited the office of plaintiff number of times with handsome amount of Rs. 50000/- (Rs. fifty thousand only) and requested the plaintiff to get the same deposited in the loan account of the defendant.
- d) That the officials of the plaintiff bank failed to consider the request of the defendant and told the defendant that he had to make the payment of full loan amount alongwith interest and returned the above said amount of the defendant without any sufficient reasons.
- e) That the defendant ultimately seeing no alternative got deposited the said amount of Rs. 50000/- in his saving account no. 10656479480 with the plaintiff bank.
- f) That the defendant also gave reply to all the notices/letter issued by the plaintiff bank by narrating all the real state of affairs. The defendant has been unnecessarily harassed by the officials of plaintiff bank. The defendant has also lodged a complaint qua officials of the plaintiff bank with the higher authorities whereupon the officials of plaintiff bank just with a view to save their skin filed this false and bogus suit which is premature also.

6. That the plaintiff bank is estopped to file the present suit by its own act and conduct.

2. The petitioner also wants to amend para no. 3 of written statement on merits by deleting the remaining words after the words "Loan of Rs. 125000/—" and similarly the petitioner wants to delete the words "which might have been converted into alleged agreement or authority" of para no. 4 of the written statement. The petitioner also wants to add following words in para no. 8 of written statement:

The notices/which were sent by the plaintiff bank or its counsels were duly replied by the defendant in due process of the law but the plaintiff bank failed to take into consideration the same for the reasons best known to them.

3. Vide impugned order dated 04.10.2013, the trial Court has dismissed the said application. Hence, this revision petition.

4. I have heard learned counsel for the petitioner and perused the record.

5. Initially, written statement was filed on 09.03.2011 and after a period of more than one year and nine months, the application for amendment of written

statement has been filed. The suit is at the stage of leading evidence by the petitioner-defendant. The amendment has been sought after the commencement of trial. If the amendment sought is allowed, the same will virtually amount to de novo trial. In view of amended provisions of the Code, after commencement of trial, only formal amendment can be allowed. In the present petition, the amendment sought will change the entire scenario and by virtue of same, the petitioner will be able to withdraw the admissions made in written statement.

6. In view of above, I do not find any illegality or perversity in the impugned order. Dismissed.