
(1979) 11 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 671 of 1979

Bhajan Lal Ahuja

APPELLANT

Vs

M/s Dena Bank and others

RESPONDENT

Date of Decision : 16-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 8

Citation : (1979) 11 P&H CK 0066

Hon'ble Judges : C.S. Tiwana, J

Bench : Single Bench

Advocate : D.V. Sehgal and Mr. P.S. Rana, for the Appellant; H.R. Bansal, for the Respondent

Judgement

C.S. Tiwana, J.—This revision on behalf of Defendant No. 3 is directed against the order dated March, 5, 1979 of the Sub Judge First Class, Amritsar, who held in a suit filed by Dena Bank for the recovery of a certain sum of money that the Defendants Nos. 3 and 4 could not avail of the provisions contained in Order 30 Rule 8 of the Amended Code of Civil Procedure. The Defendants had at first denied this fact that they were partners in the firm against which the suit was brought. The relevant provision in the old Code was such which only enabled a partner to appear under protest and then deny that he was a partner in the firm which had been sued. This provision has been materially amended so as to give the right to a Defendant to get it determined from the Court whether he was a partner in the firm at the relevant time. It further provides that if the Court holds that the Defendant was a partner at the material time that would not preclude him from filing the defence denying the liability of the firm in respect of the claim against the Defendant. It so happened that when the Defendants Nos. 3 and 4 were examined as their own witnesses they made admissions to this effect that they were partners in the firm at the material time. Thereafter they filed an application before the trial Court praying that in view of the changed circumstances(sic) they should be allowed to lead evidence on the merits of the case.

2. By the impugned order the trial court dismissed the application on this misapprehension(sic) that suit having been filed in the month of December, 1973(sic) , could as(sic) be governed by the amended provision contained in Order 3, Rule 8, Code of Civil Procedure. Section 97, CPC (Amendment) Act, 1976, clearly provides that the provisions of the new Code would become applicable to all pending suits save as provided by sub section (2) this case being not covered by that Sub-section, by virtue of Sub-section (3) of Section 97 of the above mentioned Act, the prayer of the Petitioner had to be considered and it could not be rejected(sic) merely on the ground that it could not be made.

3. Learned Counsel for the Respondents agrees with the above legal position and thus the application of the Defendants is required to be decided by the trial Court. However on behalf of the Respondents certain objections are being raised for the consideration of the application at this stage. This revision accepted. The application of the defendants made under order 30 Rule 8 of the amended CPC shall be considered by the court on its merits by taking into consideration all those objections which might be raised by the Plaintiff. There shall be no order as to costs as the revision has been necessitated on account of the trial Court having taken a wrong view of the law. The parties through their counsels are directed to make their appearance before the trial Court on December 7, 1979, so that further proceedings be taken by it.