
(1998) 05 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 609 of 1998

State Bank of India

APPELLANT

Vs

Jitendera Engg. Works and Others

RESPONDENT

Date of Decision : 14-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17A

Citation : AIR 1999 P&H 59 : (1998) 120 PLR 629 : (1998) 3 RCR(Civil) 104

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Sachin Mittal, for the Appellant; Anil Khetarpal, for the Respondent

Final Decision : Allowed

Judgement

Sat Pal, J.—This petition has been directed against the order dated 3-2-1998, passed by the Civil Judge (Junior Division), Kurukshetra. By this order, the learned Civil Judge has dismissed the application filed by the petitioner/Bank under Order 18, Rule 17A, read with Section 151, C.P.C. for additional evidence. Notice of this petition was issued to the respondents.

2. Mr. Mital, learned counsel appearing on behalf of the petitioner submits that in the present case in the plaint originally the name of Mr. J. M. Uppal, Chief Manager of the petitioner-plaintiff Bank was typed but on the date when the suit was to be filed in the Court, Shri J. M. Uppal was on leave and in his absence, the plaint was signed by Shri S. R. Bhola, another officer of the Bank who was available on that day. He further submits that in the original copy of the plaint, the name of Shri J. M. Uppal was substituted by Shri S. R. Bhola, but in the office copy inadvertently correction was not made. He submits that all these facts were duly mentioned in the application filed by the plaintiff-Bank under Order 18, Rule 17A, C.P.C. The learned counsel, therefore, contends that in the facts and circumstances of the case, it cannot be said that the plaintiff-Bank despite due diligence did not examine the evidence at the relevant time. He also submits that in view of the law laid down by the Apex Court in the case of United Bank of

India Vs. Naresh Kumar and others, , the suit filed by the Bank for recovery of loan should not be dismissed on the ground of the plaint not being signed and verified by the competent person.

3. Mr. Khetarpal, learned counsel appearing on behalf of the respondent, however, submits that the requirement of Order 18, Rule 17A, C.P.C. has not been fulfilled in the present case as PW 1 B. K. Gupta, who appeared on behalf of the plaintiff Bank has clearly stated in his statement that the plaint was signed and verified by Shri J. M. Uppal though according to the facts mentioned in the application, the plaint in fact was signed by Shri S. R. Bhola. He submits that the negligence of the counsel is not a good ground for allowing the application under Order 18, Rule 17, C.P.C. In support of this submission, the learned counsel has placed reliance on a judgment of this Court in Lakhbir Singh v. Kesar Kaur 1984 CLJ 599. The learned counsel of the respondent further submits that in fact the arguments of both the parties have already been heard by the learned trial Court and as such the application filed by the plaintiff-Bank under Order 18, Rule 17A, C.P.C. was not maintainable. In support of this submission, the learned counsel placed reliance on two judgments of this Court in Madan Mohan Aggarwal v. Mansa Devi, 1985 (2) PLR 206 and Ram Gopal Banarsi Dass v. Satish Kumar, 1990 (2) PLR 277.

4. After hearing the learned counsel for the parties and having perused the impugned order, I am of the opinion that the impugned order passed by the learned trial Court is not legally sustainable. As mentioned in the application itself, which has not been controverted by the other side, in the original plaint the name of Mr. Uppal, the then Chief Manager was typed for filing the suit but since Mr. Uppal was not present on that day, the plaint was got signed and verified by Shri S. R. Bhola, another officer, available in the Bank. The learned trial Court itself has observed that the office copy of the Bank could not be corrected. It was purely a bona fide mistake of the bank that on the day of filing of the suit, the correction made in the original plaint could not be carried out in the office copy of the bank. Keeping in view these facts, it cannot be said that despite due diligence, the Bank could not examine the said witness at the relevant time. It was purely a case of bona fide mistake and as such the application of the Bank has to be allowed. As regards the statement of PW 1 B. K. Gupta, this statement itself cannot be a good ground for disallowing the application of the plaintiff Bank. The statement of the said witness can be read at the time of arguments for its true interpretation and application to the case.

5. As regards the contention of the learned counsel of the respondent that the case was fixed for orders, from the impugned order itself, I find that the case was fixed for rebuttal arguments and orders, and as such the judgments of this Court in the case of Ram Gopal Banarsi Ram (supra) and Madan Mohan Agarwal (supra) are not applicable.

6. For the reasons recorded hereinabove, the petition is allowed and the impugned order dated 3-2-1998 passed by the learned trial Court is set aside.

The parties through their counsel are directed to appear before the learned Court on 25th May, 1998. A copy of the order be given dasti on usual payment. Costs (sic).