



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5466 of 2024 (O&M)

Date of Order:08.07.2025

Dhan Kumar Kothari and another

.Petitioners

Versus

Sunil Jain

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Arshit Goel, Advocate
for the petitioners.**

**Mr. Amit Jain, Sr. Advocate, with
Mr. Chetan Slathia, Advocate
for the respondent.**

ANIL KSHETARPAL, JUDGE (Oral)

1. Through this revision petition, the defendants assail the correctness of the order passed by the learned Civil Judge (Junior Division), Gurugram, on 08.08.2024, while dismissing their two applications, one filed under Order I, Rule 10(2) of the Code of Civil Procedure (hereinafter referred to as 'the CPC') and second for framing an additional issue.

2. A civil suit for recovery of Rs.1,92,19,501.25/- is pending against the defendants (petitioners herein). The petitioners filed a detailed and an elaborate written statement contesting the suit. The amount is sought to be recovered on the basis of memorandum of family settlement signed by the parties. When the case was at the stage of cross-examination of defendants' witnesses, two applications were filed. In the first application filed under Order 1 Rule 10 CPC, the petitioners prayed that M/s Automobile Carriers (a partnership firm) should be impleaded as a party,



while in the second application, the petitioners prayed that the additional issue to the effect that the plaintiff shall not be deemed to be continuing partner in view of retirement deed be framed.

3. The trial court dismissed both the applications.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioners submits that in absence of the partnership firm being party to the suit, the suit would not be maintainable. He submits that the partnership firm was required to be made party in the present case. He further submits that the plaintiff while filing the suit has claimed that he continues to be partner despite the fact that he had signed the retirement deed.

6. Per contra, the learned counsel representing the respondent submits that the present suit for recovery is restricted to the amount which was treated as loan on the basis of family settlement and in the present suit the plaintiff is not claiming rendition of account from the partnership firm as the same is required to be decided by the Arbitral Tribunal in view of the order passed by the High Court on 19.02.2018 in Civil Revision No.7898 of 2016. He further submits that the plaintiff has claimed share in profit during the pendency of the suit as an alternative relief because despite the fact that he retired from the firm, his accounts have not been settled.

7. This court has considered the submissions of the learned counsel representing the parties.

8. It is evident that the petitioners have withheld material piece of information from the Court. There is already an order passed by the High Court on 19.02.2018, to the effect that the present suit is only for recovery of



amount which was payable as per the memorandum of family settlement which, in case of default, was treated as loan recoverable along with interest from the defendants. Thus, the revision petition is liable to be dismissed for concealment of material facts.

9. Even before this court, the learned counsel representing the petitioners projected that the dispute is with regard to rendition of accounts of a partnership firm which stood dissolved, which is incorrect. Moreover, the present case is restricted to recovery of the amount as per the memorandum of family settlement. Hence, whether plaintiff (respondent herein) continues to be a partner or not, is not the subject matter of dispute in the present case.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

July 08, 2025
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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**