IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1345 of 2011(O&M)
Date of decision: 11.12.2015

Joginder Singh

…..**Appellant**

versus

Krishan Lal

……**Respondent**

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vijay Lath, Advocate for the appellant
Mr.K.L.Verma, Advocate for respondent

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment and decree dated 30.9.2010, passed by the learned District Judge, Jalandhar, reversing the judgment and decree dated 11.6.2010, passed by the learned Civil Judge, Senior Division, Jalandhar, vide which, suit of the plaintiff was decreed for for recovery of Rs.3,00,000/- with costs and with interest @ 9% per annum from the date of cheque i.e. 31.8.2002 till the date of decree and 6% per annum future interest was also awarded by the lower Court.

The short facts which are required to be noticed for the purpose of the disposal of the present appeal are that according to the plaintiff, the plaintiff paid Rs.3,75,000/- to defendant for arranging a Visa for his son to visit USA. As the defendant failed to arrange the Visa for the son of the plaintiff and also failed to return the money, therefore, in discharge of the financial obligation, he issued a cheque No.095333 dated 31.8.2002 for Rs.3,00,000/-, which was later on re-validated on 30.9.2003. The cheque when presented to the bank was dis-honourned vide memo dated 4.11.2003. Plaintiff served a legal notice upon defendant to repay the money but he did not do so. Stand of the defendant is that he never received paid Rs.3,75,000/-, rather he had obtained loan of Rs.2,50,000/- from Oriental Bank of Commerce, Bhogpur, for which the plaintiff has stood as guarantor. In order to stand guarantee, the plaintiff obtained a cheque from the defendant, who was working as Junior Assistant in the Irrigation Department, Kandi Canal Circle at Hoshiarpur. There is no question of arranging Visa for the son of the plaintiff or obtaining of the loan.

The lower Court held that the loan application was filled on 29.10.2002. The loan was advanced on 25.11.2002. Cheque was issued much earlier on 31.8.2002. Plaintiff stood guarantor on 29.10.2002. Therefore, the story of the defendant of issuing cheque for enabling the plaintiff to stand guarantor for the loan to be advanced by Oriental Bank of Commerce, Bhogpur in favour of the defendant is not proved. Consequently, the suit was decreed.

Aggrieved by the said judgment, the defendant went in appeal before the learned District Judge, Jalandhar. The learned District Judge, Jalandhar, in order to believe the story of the defendant mainly relied upon the cross-examination of the plaintiff, wherein he had admitted that he had obtained a cheque of Rs.3 lacs as security from the defendant for standing guarantor to him for bank loan. He also admitted that bank took 3-4 months for processing formalities for advancing the loan. He also admitted that Oriental Bank of Commerce, Bhogpur had issued a notice on 22.7.2005 to the defendant that he has not deposited paid the installments of the loan amount and has committed default in repayment of loan. Therefore, it was held that the story of the defendant is believed and the story of the plaintiff was discarded.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the plaintiff/appellant has argued before this Court that the cheque was issued much prior to the date of even filing of the application for loan i.e. 29.10.2002. Therefore, the said cheque is not connected with the loan. It is stated that the said cheque was some different cheque than the present cheque.

I am of the view that if as per plaintiff two cheques were issued, one in lieu of the plaintiff's standing as guarantor for the defendant in the bank loan case and the other for return of the loan advanced by the plaintiff, then the plaintiff should have taken a specific plea about the existence of two cheques in the replication. In the written statement, defendant had taken categorical stand that the cheque of Rs.3 lacs was issued in lieu of the plaintiff's standing guarantor for the defendant before Oriental Bank of Commerce, Bhogpur. In the absence of such story being put forward in the replication, it has to be assumed that only one cheque was issued by the defendant for Rs.3 lacs.

Admittedly, under Section 138 of the Negotiable Instruments Act, 1881, presumption of consideration, date, time of acceptance etc. are there. But these are rebuttable presumption. Plaintiff when subjected to searching cross-examination by the counsel for the defendant, made certain valuable admissions in favour of the defendant. He admitted that defendant had applied for loan of Rs.2,50,000/- to

Oriental Bank of Commerce, Bhogpur for construction of his house. He also admitted that he stood guarantor for the defendant and for that purpose, he had obtained a cheque of Rs.3 lacs as security from the defendant. He also admitted that bank took 3-4 months to process the loan. It goes to show that though the written application for loan was filled only on 29.10.2002, the oral negotiations might have started much earlier and the defendant might have asked to bring some documents and the guarantor. It was only when all documents and guarantor were brought, application was filled on 29.10.2002. Thereafter, the bank started the process and advanced the loan of Rs.2,50,000/-.

It is also to be noticed that the revalidation of the said cheque was done by the defendant by scoring off the date and mentioning new date i.e. 3.9.2003 and initialing the same. The net result is that due to over-writing, the cheque became worthless and could not be honoured by the bank. The plaintiff otherwise did not file any complaint under Section 138 of the Negotiable Instruments Act, 1881 against the defendant.

The findings of facts have been recorded by the learned District Judge, Jalandhar, which are based on the appreciation of evidence. There is no error in the findings recorded by the learned District Judge. No substantial question of law arises in the present case.

Hence, the present appeal is dismissed.

11.12.2015 **(Kuldip Singh)**
gk **Judge**