

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA NO. 1945 OF 2012 (O&M)

Decided on : 11.05.2015

Surinder Singh

... Appellant

versus

Rajinder Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

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

Present : Mr. Vikash Maheshwari, Advocate, for
Mr. Ashish Gupta, Advocate for the appellant.

K. C. PURI, J.

This is an appeal directed by defendant/appellant against the judgment and decree dated 29.11.2011 passed by Shri Raj Shekhar Attri, the then District Judge, Patiala vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 8.6.2011 passed by Shri Sham Lal, Additional Civil Judge (Senior Division), Nabha was dismissed.

2. Brief facts of the case as gathered from the records are that Rajinder Singh-plaintiff- appellant filed suit for recovery of Rs.3,97,000/- (Rs.3,50,000/- as principal amount and Rs.47,500/- as interest along with future interest). It is pleaded that defendant/appellant borrowed a sum of

Rs.3,50,000/- from the plaintiff @ 1½% interest per month and issued a cheque bearing No.040178 dated 4.10.2004 for a sum of Rs.3,50,000/- in favour of plaintiff in order to discharge his said liability in the presence of Baljinder Singh and Kulwant Singh. It is further pleaded that defendant has agreed to repay the above said loan within two months along with interest. The plaintiff presented the cheque but the same was dishonoured on the ground that account closed and therefore, the present suit has been filed.

Upon put to notice, defendant appeared and filed written statement and contested the suit. He took preliminary objection of cause of action, maintainability, estoppel; running of money lending business by plaintiff without its licence, fraud and filing of present suit on false facts. It is further pleaded that no cheque was issued on 04.10.2004 for a sum of Rs.3,50,000/- in favour of plaintiff. The said cheque in question is the result of fraud and the defendant had already closed the said account.

It is further pleaded that he was in need of Rs.2,00,000/- for extension of construction and renovation of his constructed house. Plaintiff and Hardev Singh, his brother had brought the defendant to HDFC, Bank Nabha Branch for opening bank account and got issued cheque book in his name. Rajinder Singh plaintiff has taken four blank cheques from the defendant and assured him that said four cheques were to be given to ICICI Bank, Patiala from where loan of Rs.2,00,000/- has to be raised for defendant and same would be used by bank for repayment of loan amount in four installments. So, fraud has been committed on the defendant.

Replication was filed. From the pleadings of parties, following issues were framed :-

- 1) Whether defendant after raising a loan of Rs.3,50,000/- had issued cheque dated 4.10.2004 for a sum of Rs.3,50,000/- of even date in favour of plaintiff ? OPP
- 2) Whether the plaintiff is entitled for recovery of suit amount ? OPP
- 3) If issue No.2 is proved in affirmative, whether the plaintiff is entitled for interest if so at what rate ? OPP
- 4) Whether the present suit is not maintainable ? OPD
- 5) Whether the plaintiff has no cause of action and locus standi ? OPD
- 6) Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
- 7) Relief.

The trial Court, taken up issue Nos.1, 2 and 3 together. All these issues were decided in favour of the plaintiff and against the defendant. Issue Nos.4 to 6 were also decided against the defendants. Consequently, the suit of the plaintiff for recovery of Rs.3,50,000/- along with interest @ 12%per annum from the date of advancement i.e. 4.10.2004 till date of decision of suit and future interest @ 6% per annum on principal amount from date of decision of the suit till realization was decreed vide judgment and decree dated 8.6.2011.

6. Feeling dissatisfied with the judgment and decree dated 08.06.2011, defendant preferred first appeal before District Judge, Patiala. The learned District Judge, Patiala after re-appraisal of the evidence, dismissed the appeal vide judgment and decree dated 29.11.2011.

7. Defendant-appellant still feeling aggrieved against the

judgment and decree dated 29.11.2011 and judgment and decree dated 08.06.2011 has preferred the present regular second appeal, before this Court.

8. The appellant in paragraph No.06 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the impugned judgment and decrees passed by Id. courts below are illegal, without jurisdiction, perverse, result of misreading of evidence and are not sustainable in the eyes of law ?
- (ii) Whether the courts below are legally justified in decreeing the suit of the plaintiff-respondent without there being specific pleadings as to when and on what date, month and year the alleged cash loan amount was advanced ?
- (iii) Whether the cheque in question can be said to be issued in discharge of the liability when neither any specific particular facts as to creating liability, are pleaded nor proved ?
- (iv) Whether the cheque in question was procured by way of fraud as the same has been issued after closer of the account in the facts and circumstances of the case ?
- (v) Whether the judgment passed by the Id. First appellate court can be said to be a judgment in the eyes of law being violation of order 41 rule 30/31 CPC ?
- (vi) Whether a grave and manifest injustice has been caused to the appellant ?

9. However, during the course of arguments, learned counsel for the appellant did not press any substantial question of law. However, it is submitted that in revision petition in respect of offence under Section 138 of the Negotiable Instruments Act, regarding cheque in question, an amount of Rs.3,50,000/- has been deposited. So, it is submitted that since the

amount has been deposited and as such the present appeal be accepted.

10. I have carefully considered the said submission but do not find any force in the said submission.

11. The amount of Rs.3,50,000/- ordered to be paid to Rajinder Singh plaintiff in Criminal Revision No.3142 of 2014 by this Court, shall be adjusted against the decretal amount. Both the Courts below have given concurrent finding that defendant had borrowed a sum of Rs.3,50,000/- from the plaintiff. Even criminal court has upheld the contention of the plaintiff.

12. So, in view of the above discussion, I have no hesitation in holding that no question of law, much-less the substantial question of law has arisen in the present appeal.

13. Consequently the appeal preferred by the defendant/appellant is without any merit and the same stands dismissed.

14. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

May 11, 2015

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