IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 3302 OF 2012 (O&M)
DECIDED ON : 01.05.2015

Manjit Kaur

...Appellant

versus

State Bank of Patiala and another

...Respondents

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

Present : Ms. Ravinder Kaur Manaise, Advocate,
for the appellant.

Mr. D.K. Singal, Advocate,
for respondent No.1.

K. C. PURI, J. (ORAL)

CM NO. 8796-C OF 2012

The application stands allowed and the applicant-appellant stands exempted from filing the certified copies of judgment and decree.

MAIN CASE

This is an appeal directed by the defendant/appellant against the judgment and decree dated 21.04.2012 passed by Shri Rajiv Kalra, Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, vide which the appeal preferred by the defendant No.2/appellant against the judgment and decree dated

30.07.2010 passed by Shri Rakesh Kumar, Civil Judge (Senior Division), Gurdaspur, was partly accepted.

Briefly stated, State Bank of Patiala, filed a suit for recovery of ₹45,023/- along with future interest. It was pleaded that the defendants are having a savings account No. 01190007878 opened with the plaintiff bank at its branch Gurdaspur since 30.05.1996. The defendants are old customers of the bank and as such, under the procedure and scheme for providing facility to the customers, the defendants were issued ATM with the number as 064401 with the facility to withdraw the amount from their saving accounts through ATM machine. On 23.08.2004, there was only a sum of ₹3310.01 in the account of the defendants. On that day, defendants withdrew ₹300/- at one time, ₹10,000/- at second time on 24.08.2004 and another sum of ₹10,000/- at third time and also ₹5000/- at fourth time on 24.08.2004 as 23.08.2004 and 24.08.2004 were Saturday and Sunday. It was further pleaded that at the time of withdrawing the above said amount, the defendants were having only ₹3310.01 in their saving account and they were not entitled to withdrew the excess amount of ₹25,000/-. ₹3000/- was debited from the account of the defendants and as such, they have withdrawn ₹22,000/- through over draft facility. In spite of repeated requests, the said amount was not paid to the plaintiff bank. A registered legal notice dated 08.12.2006 was issued, in response to which, defendant No.2 gave an undertaking that she will repay the amount within two months, but the amount was not paid. Again a legal notice dated 28.01.2009 was issued in response to which defendant No.2 again promised to repay the amount in question. The said amount has not been paid till date. Hence, the suit was filed.

Upon put to notice, the defendant No.1 did not appear and as such, he was proceeded ex parte.

Defendant No.2, who is wife of defendant No.1 appeared and resisted the suit by way of filing written statement wherein she has pleaded that she never received ATM card from the plaintiff bank. She further pleaded that her husband who is joint holder of the account is missing for the last five years.

Replication was not filed.

From the pleadings of the parties, following issues were framed :-

1) Whether the suit of the plaintiff is within limitation ? OPP

2) Whether the plaintiff bank is entitled to the relief of recovery as prayed for ? OPP

3) Relief.

In order to prove their case, the plaintiff examined Shashi Bhushan Madhar as PW-1, Darshan Kumar as PW-2, Parbhat Singh as PW-3 and closed the evidence after tendering certain documents.

On the other hand, defendant No.2 herself stepped into the witness box as DW-1 and examined Baljit Singh as DW-2 and closed the evidence.

The learned trial court after appreciating the evidence, decided both the issues in favour of the plaintiff bank and against the defendants. Consequently, the suit of the plaintiff was decreed for recovery of ₹45,023/- along with interest @ 14.75% per annum from 23.05.2010 till realization of the amount.

Feeling dissatisfied with the above said judgment and decree dated 30.07.2010 passed by the Civil Judge (Senior Division), Gurdaspur, defendant No.2/appellant preferred appeal before the first Appellate Court. The said appeal was partly accepted and it was held that the defendants have not applied for over draft facility and as such, they are not entitled to withdraw the amount in excess and it is negligence on the part of plaintiff bank and as such, the defendants were held liable to pay ₹22,000/- along with interest @ 6% per annum from the date of filing the suit till its payment, vide judgment and decree dated 21.04.2012 passed by Shri Rajiv Kalra, Additional District Judge (Adhoc) Fast Track Court, Gurdaspur.

Still feeling aggrieved with the above said judgment and decree dated 30.07.2010 passed by Civil Judge (Senior Division), Gurdaspur and judgment and decree dated 21.04.2012 passed by Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, the defendant No.2/appellant has preferred the present regular second appeal.

Learned counsel for the appellant, in para no.10 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

1) Whether the findings of the courts below are perverse and based upon mere assumptions ?

2) Whether the appellant can be held liable to pay the amount without any evidence on record to prove that she has withdrawn the same ?

3) Whether the findings given by learned courts below are based upon misreading of evidence and not sustainable in the eyes of law ?

4) Whether the impugned judgments and decrees passed by the courts below are wrong, illegal and unjust ?

Learned counsel for the appellant has submitted that it is the finding returned by the Lower Appellate Court that appellant and her husband have not applied for over draft facility. Since they have not applied for over draft facility and as such, the withdrawal of the amount is not believable. The appellate court should have dismissed the suit of plaintiff bank in whole. It is further submitted that even ATM card was not issued in the name of defendants and as such, there was no question of withdrawing the amount from the ATM machine. It is further submitted that judgments of both the courts below are the result of misreading and misinterpreting the evidence.

I have carefully considered the said submissions but do not find any force in the same.

The First Appellate Court has observed that defendant No.2-Manjit Kaur while appearing as her own witness has admitted that ATM card has been issued. There is finding returned by both the courts below that defendants have withdrawn the amount of ₹25,000/- from the savings bank account through ATM machine on different dates. Once it is proved that the defendants have withdrawn the amount of ₹22,000/- in excess of the amount lying in their savings bank account, they are liable to pay the the said amount along with interest.

The First Appellate Court reached to the conclusion that no over draft facility has been applied by the defendants and as such, the bank is negligent and on that account, there is nothing on record that the findings of both the courts below regarding withdrawing the amount of ₹22,000/- from the savings bank account on different dates, is perverse or illegal. It is settled law that the appeal lies only in case any substantial question of law has arisen. Learned counsel for the appellant could not point out from the facts of present case that any substantial question of law has arisen in the instant appeal.

So, in view of the above, the appeal is without any merit and the same stands dismissed.

MAY 01, 2015 **(K. C. PURI)**
shalini **JUDGE**