

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

**RSA NO. 4238 OF 2012 (O&M)
DECIDED ON : 20.04.2015**

Jagtar Singh

...Appellant

versus

M/s Anmol Trading Company

...Respondent

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

Present : Mr. Pawan Malik, Advocate for
Mr. C. M. Munjal, Advocate,
for the appellant.

None for the respondent.

K. C. PURI, J. (ORAL)

CM NO. 11709-C OF 2012

There is delay of 194 days in filing the appeal. The same stands condoned for the reasons mentioned in the application.

MAIN CASE

Challenge in this appeal is to the judgment and decree dated 18.11.2011 passed by Shri S. S. Panesar, Additional District Judge, Moga, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 03.06.2010 passed by Shri Rakesh Gupta, Additional Civil Judge (Senior Division), Moga, was dismissed.

Briefly stated, M/s Anmol Trading Company-plaintiff filed a suit for recovery of ₹7,34,500/-. The facts as gathered from the record are that the plaintiff company was carrying on the business of commission agent in the Grain Market, Dharamkot and farmers of the area used to borrow money from it. Defendant, being a farmer, also use to borrow money from the plaintiff firm. On 19.11.2004, the defendant borrowed a sum of ₹6,00,000/- from the plaintiff firm vide cheque no.0028470 and ₹50,000/- on 01.12.2004 vide cheque no.0028472 pertaining to State Bank of Patiala, Dharamkot. On 31.05.2005, the accounts between the parties was settled and ₹28,616/- were added on account of interest and as such, a sum of ₹6,78,616/- became payable by the defendant. However, neither the defendant repaid the said amount nor sold his agricultural produce to the plaintiff firm. Hence, the suit was filed.

Upon put to notice, defendant/appellant filed written statement taking preliminary objections that the plaintiff has no locus standi to file the present suit; the plaintiff has not come to the court with clean hands; the plaintiff is estopped by his act and conduct from filing the suit and that the suit is not maintainable. The other averments were denied.

On merits, the defendant denied that he borrowed the alleged amount from the plaintiff firm. He further averred that about five years back, he obtained ₹10,000/-, ₹2000/- and ₹60,000/- from the plaintiff firm and against that amount, he

gave price voucher of sugar cane crops and the account was settled between the parties.

Replication was filed wherein all the averments mentioned in the written statement were denied and those mentioned in the plaint were reiterated.

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

- 1) Whether the plaintiff is entitled to recover the suit amount along with interest on the grounds, as prayed for ? OPP
- 2) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 3) Whether the plaintiff has not come with clean hands before this Hon'ble Court ? OPD
- 4) Whether the plaintiff is estopped to file the present suit by his own act and conduct ? OPD
- 5) Whether the suit of the plaintiff is not maintainable ? OPD
- 6) Relief.

In order to prove their case, the plaintiff firm examined its sole proprietor Rakesh Kumar Batra as PW-1, Mohan Singh, Special Assistant, State Bank of Patiala, Dharamkot as PW-2 and closed the evidence after tendering certain documents.

On the other hand, the defendant himself stepped into the witness box as DW-1 and closed the evidence.

The learned trial court, after appreciating the evidence available on record, returned the findings on all the issues in favour of the plaintiff and against the defendant and consequently, decreed the suit of the plaintiff vide judgment and decree dated 03.06.2010.

Feeling dissatisfied with the above said judgment and decree dated 03.06.2010, the defendant/appellant preferred first appeal before the first Appellate Court. The said appeal was dismissed vide judgment and decree dated 18.11.2011 passed by Additional District Judge, Moga.

Still feeling aggrieved with the above said judgments and decrees dated 03.06.2010 and 18.11.2011 respectively, the defendant/appellant has preferred the present regular second appeal.

Learned counsel for the appellant, in para no.8 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether the judgments of both the courts below suffered from not only misreading and misdirecting of the oral and documentary evidence on record ?
- 2) Whether the respondent/plaintiff has proved the allegations as levelled in para 7 of the plaint ?

- 3) Whether non proving of the alleged cheque issued by the appellant/defendant has been proved and produced by the respondent/plaintiff ?

Learned counsel for the appellant has submitted that the judgments of both the courts below are the result of misreading and misdirecting the oral as well as documentary evidence. However, he could not point out any instance of misreading or misdirecting the evidence.

Learned counsel for the appellant has further submitted that in fact the appellant has borrowed a sum of ₹10,000/-, ₹2000/- and ₹60,000/- about five years back from the plaintiff firm and in lieu of that, the sugarcane crop was sold to the plaintiff firm and now nothing is due towards him. He has further submitted that the plaintiff firm being a commission agent, is exploiting the defendant/appellant.

I have considered the submissions made by learned counsel for the appellant and have gone through the records of the case.

The cheques have been duly credited in the account of defendant. It is settled law that second appeal lies only if there is any substantial question of law involved in the lis. Learned counsel for the appellant has failed to convince this court that any question of law much less substantial question of law has arisen in the present appeal. The questions mentioned in para no.

8 of the grounds of appeal does not exist at all.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

APRIL 20, 2015

shalini

(K. C. PURI)

JUDGE