

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

RSA No.1233 OF 2013 (O&M)
DATE OF DECISION : 4th SEPTEMBER, 2015

Balwinder Singh

.... Appellant

Versus

Dalwinder Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Prateek Pandit, Advocate for the appellant.

Mr. Ramesh Sharma, Advocate for respondents No.1 to 3.

* * * *

SURINDER GUPTA, J. (ORAL)

1. In the suit filed by Dalwinder Singh, Baljit Singh and Surjit Singh-Plaintiff-respondents seeking relief of permanent injunction restraining the appellant-defendants-Balwinder Singh and others from recovering any amount from them in forcible and illegal manner or with political pressure appellant along with Sukhwinder Singh and Dalip Singh Bhatti filed counter claim for recovery of ₹1,51,846/- as calculated in para 3 of the counter claim which read as follows:

“3. The plaintiffs/defendants did not paid (sic pay) the rent of the shuttering material i.e., Girder, Fatties, Ballies and Batton etc. and the plaintiffs/defendants also did not return back 300 Fatties along-with rent to the counter claimants/defendants and an amount of

Rs.69343 was due of the counter claimants/defendants towards the plaintiffs/defendants and in this respect a compromise was effected on 23.02.2002. As per said compromise on 23.2.2002 the rent of the shuttering material was due towards the plaintiffs/defendants amounting to Rs.69343 and price of 300 fatties @ Rs.60 each, amounting to Rs.18000/- and the rent of 300 fatties @ 10p per fatties per day which comes to Rs.900 per month amounting to Rs.25,200 and the rent of other shuttering material of 28 months after 23.2.2004 is Rs.39303/- and the total amount payable by the plaintiffs/defendants to the counter claimants/defendants is Rs.1,51,846. It is also mentioned here that prior to compromise in the year 1999 the plaintiffs paid Rs.3000/- on 12.3.1999 and Rs.4000/- on 22.3.1999 which was adjusted at the time of compromise.”

2. In reply to the counter claim the plaintiffs denied their liability to pay the amount of ₹1,51,846/- and also the compromise dated 23.02.2002 between the parties.

3. The suit was dismissed in default on 22.08.2005 and it appears that along with suit, file of counter claim was also consigned to record room. Thereafter, on the application of the defendants, counter claim was restored but the plaintiffs never sought the restoration of their suit and were

later on proceeded ex parte. The counter claim was partly allowed for recovery of ₹69,343/- with interest @ 8 % per annum from the date of filing of the counter claim till the date of recovery. While dismissing the appeal, the first appellate court relied upon the compromise dated 23.02.2002 Ex.D-1 and observed as follows:

“13. Keeping in view the arguments advanced by learned counsel for both the parties and from the perusal of the record pertaining to the present case I am of the opinion that appellants/counterclaimants themselves have alleged the compromise dated 23.02.2002 vide which the respondents had agreed to pay the amount of Rs.69343/- including the rent of shuttering material and in lieu of 300 fattis. There is specific mentioned of 300 fattis alongwith shuttering materials alleged to be given on rent by the appellants. Hence the learned lower Court has rightly relied upon the said document proved by the appellants themselves. It is admitted fact that both the parties had settled the amount finally regarding dispute of rent and 300 fattis between the parties. It is not mentioned in the compromise Ex.D1 that respondents shall be liable to pay the amount of Rs.18000/- as price of fattis. It is not mentioned even the fact that 300 fattis have not been returned. There is mention of only the amount of Rs.69343/- as settled

amount payable by the respondents to the appellants and appellants themselves have proved the document as Ex.D1 and have filed the counterclaim on the basis of said document therefore, counterclaim has been rightly decreed for the amount of Rs.69,343/- alongwith interest @ 6% per annum.”

4. Against the concurrent findings of the courts below the appellants have come up with this regular second appeal.

5. I have heard learned counsel for the parties and perused the paper book and lower court record with their assistance.

6. Learned counsel for the appellants has argued that both the courts below have wrongly interpreted the agreement dated 23.02.2002. The Panchayat vide that compromise had allowed a sum of ₹69,343/- to the appellants towards the rent of the shuttering material provided to the plaintiffs-respondents. Shuttering material was also to be returned which the plaintiffs-respondents failed to return, as such, they remained liable to pay the rent for the same as claimed and also price of the shuttering material as claimed in para 3 of the counter claim.

7. Learned counsel for the respondents argues that the term of reference to the Panchayat was rent of shuttering material and vide compromise Ex.D-1 it was settled that the plaintiffs will pay ₹69,343/-. There was no term settled in the compromise that the shuttering material will also be returned. As such, the claimant is neither entitled to the price

of the shuttering material nor rent as claimed by him beyond the amount of compromise.

8. The first appellate Court in para 13 referred above has elaborately dealt with the terms of compromise. The perusal of Ex.D-1 shows that the reference to the respectable was with regard to rent of shuttering material and both the parties agreed to abide by the decision arrived by the respectables in this regard. It was decided/agreed that Dalwinder Singh will pay ₹69,343/- as rent of the planks. No term was agreed that the planks will be returned. The reason for not settling this term that the planks will be returned is evident from the fact that the value of the plank, even as per the appellant, was ₹18,000/- only, while towards rental a sum of ₹69,343/- was assessed. In case the parties had agreed that Dalwinder Singh had to return the planks also, this fact must have been recited in the compromise and the rent would have been allowed for the future period for which the planks are retained. It is evident that the settlement for ₹69,343/- was in lump sum towards entire claim of the appellant.

9. On perusal of the judgment of both the courts below, I find no legal or factual infirmity therein calling for interference by this Court. No substantial question of law requiring determination arises in this appeal. This appeal has no merit, accordingly the same is dismissed.

4th September, 2015
‘raj’

(SURINDER GUPTA)
JUDGE