IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1933 of 2013 (O&M)
Date of Decision.04.09.2015

Kashmir Singh through its GPA Joginder Singh ....Appellant

Versus

State Bank of India and another ......Respondents

Present: Mr. Balbir Kumar Saini, Advocate for
Mr. Sanjeev Pandit, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J.

1. Delay of 77 days in refiling the appeal is condoned.

2. The 1st defendant in suit is the appellant before this Court. There is a plea for adjournment at the instance of the counsel but I notice that ever since the appeal was filed in March, 2013, there have been persistent requests for an adjournment on some excuse or the other. It has been adjourned on several hearings and I find that there is simply no justification for adjournment after availing of nearly seven opportunities in the course of two years. I decline the request and I have examined the case records and proceeded to pass the following order, considering the further fact that there is always a duty only on the Court to examine whether a second appeal has any substantial question of law that would require to be addressed.

2. The suit was filed by the State Bank of India for recovery of

certain sums on the basis that the 1st defendant had impersonated himself as the 2nd defendant and withdrawn monies from the NRI Account opened with the plaintiff-Bank. The NRI Account No.26/6594 was admittedly in the name of the 2nd defendant. The 1st defendant and the 2nd defendant are brothers and both of them are Non Resident Indians.

3. It was a case where a duplicate passbook had been applied by the 1st defendant claiming himself to be the 2nd defendant his brother and also applied for cheques and constantly withdrew various sums of money brought through cheques which were exhibited as P4 to P11 aggregating a sum of ₹ 3,45,000/-. A suit had been filed by the 2nd defendant against the Bank claiming recoveries on the ground that his account had been debited to the amounts based on cheques not drawn by him and the Bank had committed a serious breach of duty in not protecting the customer. The Bank credited the amount by reversing the entries and filed a suit for recovery of the amount to which it was demnified by filing a suit against the 1st defendant who was reported to have impersonated the 2nd defendant and also impleaded the 2nd defendant as a party.

4. In the course of evidence, it came out that the amounts had been withdrawn and the most crucial issue was whether the 1st defendant Kashmir Singh was actually in India at the relevant time. The Court found that the 1st defendant withheld the most crucial evidence which was possible namely the passport and the Visa endorsements by the immigration authorities. It also took notice of the fact that there was a criminal case which was registered against the 1st defendant for

forgery and impersonation and the witnesses had very clearly spoken of both the fact that the amount standing in the name of the 2nd defendant had been withdrawn only by the 1st defendant. The Court had no difficulty in finding that the best evidence had been withheld by the 1st defendant and the Bank was surely competent to institute a suit and secure a decree for the amount which it had allowed the 1st defendant to withdraw by impersonating the 2nd defendant who was the customer of the Bank. The suit was correctly laid, the evidence properly appreciated and the conclusion correctly entered.

5. I do not find that there is any substantial question of law involved in appeal to favour the 1st defendant-appellant before this Court. There is no merit at all and I dismiss the second appeal.

(K. KANNAN)
JUDGE

September 04, 2015
Pankaj*