

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

**RSA NO.2520 OF 2013 (O&M)
DATE OF DECISION : 16th FEBRUARY, 2015**

M/s. Tara Chand Satish Chand, Commission Agent, Gurgaon

.... Appellants

Versus

M/s. Hardev Sahai Jawahar Lal, Commission Agent, Gurgaon

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. Sudhir Aggarwal, Advocate for the appellant.

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SURINDER GUPTA, J. (ORAL)

1. The suit was filed by plaintiff- respondent seeking recovery of ₹4,54,104.14. It was alleged that plaintiff as well as defendant both are commission agents and there was no dispute about the fact that the amount of ₹4,54,104.14 was due towards plaintiff as on 31.03.2003. The appellant-defendant came up with a plea that amount of ₹4,54,104.14 was paid to the plaintiff-respondent. This amount was not available in the accounts book of the appellant and was arranged from other persons, as such, no entry in the account book regarding the payment was made. At the same time the plaintiff-respondent issued a cheque for a sum of ₹4,54,104.14 without date, as such, no amount was due or payable to the plaintiff-respondent and the matter only remained with regard to entry in the account book which was to be made on a future date, which at no point of time was made in the accounts of the defendant-appellant.

2. Learned Civil Judge (Senior Division), Gurgaon vide judgment and decree dated 31.01.2012 decreed the suit for recovery of suit amount with interest @ 9% per annum from the date of filing of the suit till its realization. The judgment and decree passed by the lower Court was affirmed by the Additional District Judge, Gurgaon.

3. In this regular second appeal the appellant seeks setting aside of concurrent finding of the Courts below.

4. Learned counsel for the appellant argues that at the time of payment of ₹4,54,104.14 to the plaintiff-respondent a cheque of same amount was obtained from the plaintiff-respondent which was never got encashed. This shows that the payment of the suit amount was made in cash. Both the Courts below have not appreciated this argument of the defendant-appellant and have discarded the same on following grounds:

(i) That there was no occasion for the plaintiff-respondent to issue a cheque of the amount which he was entitled to receive being due towards appellant.

(ii) The cheque was drawn in favour of (self) and not in the account of defendant-appellant.

(iii) No entry of the payment of the suit amount was made in the account books of the defendant-appellant either on the date of payment or even subsequently till the suit was filed.

5. It is not believable that when both the parties are in business and maintaining their regular accounts, any payment will be made either in cash or through a document and will not be reflected in the account books.

It has also come on record that earlier all the payments were made through cheque and no payment was made to the plaintiff-respondent in cash. In these circumstances the issuance of cheque by the plaintiff-respondent is irrelevant and has no bearing on his claim that the suit amount was paid to the plaintiff/respondent.

6. On perusal of judgment of both the Courts below and paper book, I find not legal or factual infirmity therein. No substantial question of law requiring determination arises in this appeal, which has no merits.

7. Dismissed.

16th February, 2015
'raj'

(SURINDER GUPTA)
JUDGE