

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

**Regular Second Appeal No.3099 of 2013 (O&M)
Date of decision:13.03.2015**

Mastan Singh

.....Appellant

Versus

Sarwan Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Arya, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.8281-C of 2013

For the reasons mentioned in the application, same is allowed and delay of 602 days in filing the appeal is condoned.

RSA No.3099 of 2013

Defendant-appellant has come up in regular second appeal against the judgment dated 10.09.2011 passed by the District Judge, Gurdaspur, whereby appeal against the judgment and decree dated 09.06.2009 passed by the Civil Judge (Junior Division), Gurdaspur, has been dismissed.

Sarwan Singh-plaintiff (respondent herein) filed a suit for recovery of Rs.47,000/- alleging therein that defendant-appellant was doing the business of 'committees'. Plaintiff had paid him Rs.47,000/- in installments. The said amount was to be repaid by the defendant-appellant in the month of November, 2006, as per oral agreement dated 16.11.2005, which was reduced into writing vide agreement/affidavit dated 14.12.2005. According to the said agreement, defendant-appellant had agreed to pay the amount in

installment i.e. Rs.18,000/- up to 03.01.2006 and Rs.29,000/- up to

13.02.2006, but he did not pay anything to the plaintiff. A legal notice dated 20.01.2006 was issued by the plaintiff, which was returned undelivered as the defendant-appellant was residing at Labana Music Centre, in front of Tanki, Police Lines Road, Gurdaspur. Thereafter, another notice was issued on 25.02.2006 on the aforesaid address, which was received back 'unclaimed'.

Upon notice, the defendant-appellant filed written statement and took preliminary objections with regard to the maintainability of the suit, suppression of material facts, suit being bad for non-joinder and mis-joinder of necessary parties etc. On merits, it was admitted that both the parties are co-villagers. It was stated that no such amount was ever received by him. Plaintiff-respondent did not mentioned the particulars regarding date, month and year of alleged payment on account of committee/chit fund. It was further stated that the business of committee/chit fund was illegal under Section 23 of the Indian Contract Act. Affidavit dated 14.12.2005 was forged and fabricated document, which was prepared by the plaintiff with the help of Mohinder Singh, DSP by using undue force. The plaintiff had a dispute with Pardeep Kumar C/o Gagan Stationery, Gurdaspur and an attempt was made to impose the liability of Pardeep Kumar on the defendant-appellant.

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

1. Whether the plaintiff is entitled for recovery of Rs.47,000/- along with interest @ 12% p.m. w.e.f. 13.02.2006? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is not properly verified? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of

necessary parties? OPD

5. Whether the suit is time barred? OPD

6. Relief.

The trial Court, after going through the evidence led by the parties, held that the defendant himself admitted in the written statement that the agreement/affidavit dated 14.12.2005 was prepared with the help of Mohinder Singh, DSP. Thus, execution of the agreement/affidavit, Ex.PW2/A, was not denied. In his cross-examination, the defendant-appellant denied his signatures on the said affidavit. The said agreement/affidavit was attested by the Executive Magistrate and the same was bearing joint photograph of the defendant and Captain Balbir Singh (PW-2), witness to the said affidavit. Captain Balbir Singh (PW-2) in his examination-in-chief stated that he had witnessed the defendant-appellant when he signed the aforesaid document. The photograph on the agreement was admitted by the defendant. The plea of the defendant that the agreement/affidavit, Ex.PW2/A, was executed under pressure was held to be unbelievable. Issue No.1 was decided in favour of the plaintiff by holding that the affidavit, Ex.PW2/A, was executed by the defendant with his own free will acknowledging his oral agreement dated 16.11.2005 to pay the amount of Rs.18,000/- till 03.01.2006 and Rs.29,000/- till 13.02.2006. Ultimately, the suit was decreed in favour of the plaintiff-respondent and against the defendant-appellant for recovery of Rs.47,000/- with simple interest of 6% per annum.

On appeal, the lower appellate Court affirmed the findings recorded by the trial Court and held that the agreement dated 14.12.2005 had been executed voluntarily. Defendant-appellant had simply denied the transaction and had not taken a plea in the written statement that the

transaction was barred by law and was against any public policy. The plaintiff-respondent was not afforded any opportunity to explain the nature and extent of the business of the defendant and on what account he paid the amount to the defendant. Therefore, it could not be said that the money deposited with the defendant falls under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. With these observations, the appeal was dismissed.

After going through the impugned judgments passed by both the Courts below, it transpires that the execution of the agreement/affidavit dated 14.12.2005 (Ex.PW2/A) has been duly proved by the plaintiff-respondent and the same has been admitted by the defendant-appellant. The defendant-appellant failed to lead any evidence to prove that his signatures on the agreement were taken under pressure or coercion. By merely stating in his cross-examination that the said document was executed in the presence of Mohinder Singh, DSP under undue influence, would not be sufficient to dismiss the suit of the plaintiff-respondent.

Concurrent finding of fact, recorded by both the Courts below, does not require any interference.

No substantial question of law arises for consideration.

Dismissed.

13.03.2015
ajp

(RITU BAHRI)
JUDGE