

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

**RSA No.4270 of 2013 (O&M)
Date of decision : July 09, 2015**

Vinod Kumar Mehta

.....Appellant

Versus

M/s Bhagwan Dass and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Ms. Divya Godara, Advocate,
for the appellant.

Mr. Chanderhass, Advocate
for the respondents.

GURMIT RAM, J.

1. This appeal has been instituted by the appellant-defendant against the judgment and decree dated 09.08.2012 passed by the Court of learned Civil Judge (Senior Division), Narnaul vide which the suit for the recovery of ₹25,560/- was decreed with costs and judgment and decree dated 22.05.2013 passed by the Court of learned District Judge, Narnaul vide which the appeal preferred against the aforesaid judgment and decree of the trial Court was dismissed with costs.

2. The case of the respondent No.1 herein (plaintiff) in nut-shell was that the appellant/defendant had borrowed from the plaintiff-firm a sum

of ₹25,000/- on 20.03.2006 vide cheque No.177256 of the same date relating to Oriental Bank of Commerce, Narnaul. This cheque was got encashed by defendant No.1. Rate of interest as settled was 75/- paise per month. Defendant paid a sum of ₹560/-, ₹560/-, ₹560/- on dated 10.10.2006, 28.12.2006, 31.03.2007 respectively and another interest amount of ₹560/- for the quarter from 01.04.2007 to 30.06.2007. Except aforesaid amount, he did not make any payment to the plaintiff and as such, a sum of ₹25,560/- including the principal amount was due against him. Ram Gopal, proprietor of the firm died on 09.05.2007 who executed a registered WILL dated 19.10.2005 during his lifetime and all the money transaction was given to Smt. Vidya Devi wife of Sh.Vishnu Kumar. Now she is sole proprietor of the plaintiff-firm. Despite the demand of the plaintiff, defendant did not pay any amount to the plaintiff and hence was the instant suit for the recovery of ₹25,560/-.

3. On notice, defendants filed the written statement jointly wherein they took preliminary objections that this suit is barred by limitation; that plaintiff has no cause of action as well as locus standi to file this suit; that the suit is false and frivolous and that there is concealment of facts.

On merits, they denied that they had ever borrowed any amount from the plaintiff-firm. Then it was their plea that Ram Gopal was ill and defendant took him to Jaipur for treatment. All the expenditure on his treatment was paid by defendant. Besides this, he also gave eight bags of wheat, desi ghee etc. When a sum of ₹25,000/- was due against Ram Gopal then he in lieu thereof, gave cheque amounting to ₹25,000/-. Death of Ram Gopal on 09.05.2007 is admitted, but it is denied that he had executed any

WILL dated 19.10.2005.

Rest of the averments were also denied by the defendants.

4. The learned trial Court after hearing learned counsel for both the parties and going through the record as well, came to the conclusion that suit amount is due against the defendant and as such, the suit of the plaintiff for its recovery was decreed with costs along with interest. Then the defendant approached the learned Appellate Court by way of an appeal against the judgment and decree of the learned trial Court, which was dismissed vide impugned judgment and decree dated 22.05.2013.

5. Being not satisfied with the judgment and decree passed by both the Courts below, the appellant has come to this Court by way of instant Regular Second Appeal, notice of which was given to the respondents.

6. I have heard learned counsel for both the parties and gone through the record thoroughly.

7. The learned counsel for the appellant has contended that statement of PW-1 does not inspire any confidence because in his cross-examination, he could not tell that in which account, in favour of whom, on which date or the month the alleged cheque was encashed. It is further her contention that except the aforesaid cheque, there is no other evidence on record to show that loan was given by the plaintiff to the defendant. It is further contended that the findings recorded by both the Courts below are liable to be set aside being perverse as well as not justifiable with the record available on file.

8. Now it is required to discuss the evidence as brought on record by the parties to prove their respective averments.

9. From the plaintiff side, PW-7 Vishnu Kumar appeared as General Power of Attorney of Vidya Devi. He tendered in his statement his duly sworn affidavit Ex.PW7/A along with one WILL Ex.P1 dated 19.10.2005 executed by Ram Gopal in favour of Smt. Vidya Devi and General Power of Attorney Ex.P2 executed in his favour by Smt. Vidya Devi. Then, it is also mentioned in his statement that an amount of ₹25,000/- was borrowed by the defendants from the plaintiff-firm on 20.03.2006, which was paid through cheque No.177256 of the same date. Except the payment of certain amounts of interest, the defendant did not pay anything else to the plaintiff-firm.

10. PW-1 Leela Ram, Clerk OBC proved statement of account Ex.PW2/A of the plaintiff-firm. PW-3 Shubh Ram Saini, Advocate also proved the General Power of Attorney dated 10.04.2008 Ex.P2 executed at the instance of Smt. Vidya Devi proprietor of M/s Bhagwan Dass Ram Gopal. PW-4 Rajesh Kumar Saini proved one legal notice dated 21.06.2007 Ex.P3, which he had issued at the instance of Smt. Vidya Devi proprietor of the plaintiff-firm and postal receipt Ex.P5. PW-5 Bharat Bhushan also proved aforesaid WILL Ex.P1 being one of its attesting witnesses. PW-6 Ram Swaroop Singh, Assistant Manager produced the statement of account of defendant for the period 01.04.2006 to 04.11.2006 Ex.PW6/A. Further he also produced the register for the year 2006 wherein it was mentioned at Sr. No.22 that a cheque No.177256 dated 20.03.2006 in the sum of ₹25,000/- had been deposited, which was sent for collection. Besides the aforesaid evidence of plaintiff, few copies of the entries as made in the *Bahi* Ex.PW7/B to Ex.PW7/F were also brought on the record. Ex.PW7/B corroborated that an amount of ₹25,000/- was deposited in the account of

Vinod Kumar. The remaining *Bahi* entries Ex.PW7/C to Ex.PW7/F were pertaining to the payment of interest made by the defendant to the plaintiff-firm from time to time.

11. On the other hand, it was pleaded by the appellant/defendant that Ram Gopal was sick and he took him to Jaipur for treatment and entire expenses incurred on his treatment was paid by him. Then it was also his plea that he gave eight bags of wheat, desi ghee etc. to him. On this count he was to recover a sum of ₹25,000/- from Ram Gopal, who in lieu thereof issued the cheque in question to him for discharge of his liability. But this plea of the appellant had remained unproved on the file since he himself did not appear in the witness box to support his claim nor did he lead any other evidence to substantiate his claim.

12. In the light of the above discussed statement of account Ex.PW1/A, Ex.PW6/A coupled with *Bahi* entries Ex.PW7/B to Ex.PW7/F it stands proved on the record that a sum of ₹25,000/- was borrowed by the defendant from the plaintiff-firm on 20.03.2006 vide a cheque of the same date. This cheque was duly got encashed by defendant No.1 and the amount of this cheque was credited in his account.

13. Keeping in view the above discussion, there is nothing on record which could warrant interference of any kind in the impugned judgments and decrees passed by both the Courts below. This appeal being merit-less stands dismissed and disposed of accordingly.

July 09, 2015
gaurav sorot

(GURMIT RAM)
JUDGE