

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

**R.S.A NO. 4544 OF 2013 (O & M)
DECIDED ON : 13.03.02015**

Pritam Singh

...Appellant

versus

Tehal Singh Sandhu

...Respondent

CORAM : HON'BLE MR. JUSTICE K.C.PURI

Present : Mr. Sanjay Mittal, Advocate.

K. C. PURI, J. (ORAL)

Challenge in this regular second appeal is to the judgment dated 17.07.2013 passed by Shri Tejwinder Singh, District Judge, Bathinda, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 26.10.2012 passed by Ms. Harinder Kaur Sidhu, Civil Judge (Senior Division), Bathinda whereby the suit filed by the plaintiff now respondent was decreed, was partly allowed.

Brief resume of the case is that the plaintiff-respondent filed a suit for recovery of ₹2,94,800/- i.e ₹2,20,000/- being the principal amount and ₹74,800/- as interest accrued

thereon, on the averments that plaintiff is the General Secretary of Punjab Pradesh Congress committee and is having good relations with Gurmeet Singh son of Gurjant Singh. The defendant influenced the plaintiff and Gurmeet Singh with a false assurance to send Gurmeet Singh to England. On 08.10.2005, defendant along with one Rajinder Singh came to Bathinda and called the plaintiff and Gurmeet Singh in the truck union and disclosed that he is having very good relations with Tehal Singh Buttar. He further disclosed that normally he takes ₹6,00,000/- for sending a person to England, but since plaintiff was closed to him, he will charge ₹5,00,000/- from them for sending Gurmeet Singh to England. Accordingly, the deal was finalized and the amount was agreed to be paid in two installments of ₹2,50,000/- each in advance. The defendant assured the plaintiff that Gurmeet Singh would be sent to England within a period of six months. He also assured the plaintiff that in case of failure, the amount would be refunded along with interest @ 2% per month. It was further alleged that plaintiff paid a sum of ₹2,20,000/- to defendant on 08.10.2005, out of which ₹20,000/- was paid in cash and the remaining amount of ₹2,00,000/- was paid through cheque bearing No. 463251 dated 08.10.2005, drawn on Oriental Bank of Commerce, MC Branch, Bathinda, which he got encashed. The remaining amount was agreed to be paid after the issuance of Visa for going to England. However, defendant failed to send Gurmeet Singh to England within the stipulated period of

six months. He even failed to get visa from the concerned department. Gurmeet Singh approached the defendant and requested him to refund the money but in vain.

Upon put to notice, defendant appeared and filed written statement taking preliminary objections that the suit is not maintainable in the present form; that the plaintiff has got no locus standi or cause of action to file the suit; that the suit is bad for mis-joinder and non-joinder of necessary parties; that the plaintiff has concealed the material facts from the court; that the civil court has no jurisdiction to entertain and try the suit; that the plaintiff is estopped from filing the suit by his own act and conduct and that the suit is false, frivolous and vexatious to the knowledge of plaintiff and as such, the same is liable to be dismissed.

On merits, it is submitted that Grumeet Singh has no relation or concern with the plaintiff. The defendant never came to Bathinda on 08.10.2005. It was denied that defendant was working as travel agent. The other averments of the plaint were denied.

Replication to the written statement was filed. From the pleadings of parties, following issues were framed by the trial Court : -

- 1) Whether plaintiff is entitled for recovery of ₹2,20,000/- along with interest thereon @ 2% per month ? OPP

- 2) Whether plaintiff has no locus standi and cause of action to file suit ? OPD
- 3) Whether suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
- 4) Whether the plaintiff has not come to the court with clean hands ? OPD
- 5) Whether the plaintiff is estopped from filing the suit due to his own act and conduct ? OPD
- 6) Whether the civil court has no jurisdiction to entertain the present suit ? OPD
- 7) Whether the defendant is entitled to compensatory costs u/s 35-A CPC ? OPD
- 8) Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW-1 and examined Gurmeet Singh as PW-2, Subash Gumber, Manager as PW-3 and closed the evidence.

On the other hand, defendant appeared as DW-1 and examined Rajinder Singh as DW-2, Sukhmander Singh as DW-3 and closed the evidence.

In rebuttal, no evidence was produced.

The learned trial Court, after appreciating the evidence available on record, decreed the suit of plaintiff for recovery of ₹2,20,000/- along with interest @ 2% per month.

Feeling dissatisfied with the above said judgment and decree dated 26.10.2012 passed by Civil Judge (Senior Division), Bathinda, the defendant preferred first appeal. The learned District Judge, Bathinda, vide judgment dated 17.07.2013 partly allowed the appeal.

Still feeling aggrieved with the judgment dated 26.10.2012 passed by Civil Judge (Senior Division), Bathinda and the judgment dated 17.07.2013 passed by District Judge, Bathinda, the defendant/appellant has preferred the present regular second appeal.

The appellant in para No.9 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal :-

- 1) Whether there is any mis-reading or non-leading of evidence by the courts below while decreeing the suit filed by the plaintiff/respondent?
- 2) Whether the court below can decide the matter after taking into consideration the evidence beyond the pleadings of the parties ?
- 3) Whether the admission made by the plaintiff in his cross-examination can be taken into consideration ?

- 4) Whether the plaintiff has proved his case according to the Indian Contract Act and the Evidence Act ?

I have heard learned counsel for the appellant and have gone through the case file carefully.

Learned counsel for the appellant has submitted that judgments of both the courts below are the result of misreading and non-reading of the evidence. The case has been decided beyond the pleadings of both the parties. The admission made by the plaintiff in his cross-examination has not been taken into consideration. The plaintiff has not proved his case according to the Indian Contract Act and The Evidence Act. It is further submitted that the trial court has decreed the suit of the plaintiff in toto but the Appellate Court has passed the decree to the extent of recovery of ₹2,00,000/- along with interest @ 6% per annum. It is further submitted that the suit of plaintiff can be decreed only in case the plaintiff is able to prove that the cheque in question of ₹2,00,000/- was in respect of sending Gurmeet Singh abroad. It is further submitted that in fact the case of defendant is that the said cheque was in respect of liability of the plaintiff which he has incurred regarding repayment of ₹5,00,000/- taken by the plaintiff from the defendant. It is also submitted that ₹2,00,000/- were repaid through cheque in

question. So, both the courts below have wrongly decreed the suit of plaintiff.

I have given my thoughtful consideration to the submissions made by learned counsel for the appellant but do not find any force in the same.

It is not disputed during the trial as well as at the time of arguments that cheque of ₹2,00,000/- was encashed by the defendant/appellant. The case of plaintiff/respondent is that the said cheque was issued with a promise to send Gurmeet Singh abroad but the defendant has not sent Gurmeet Singh abroad. The case of defendant/appellant is that the cheque was in respect of repayment of the amount advanced by him to the plaintiff/respondent in connection with transfer of one of the relative from Governor of Bihar.

Both the courts below have observed that the defendant/appellant has failed to prove which of his relative was to be got transferred from the Governor of Bihar. There is also finding of fact recorded by both the courts below that a sum of ₹2,00,000/- was given to the plaintiff with a promise to send Gurmeet Singh abroad but he has not send Gurmeet Singh abroad. The finding that the amount advanced by the plaintiff to defendant/appellant for sending Gurmeet Singh abroad is a finding of fact recorded by both the courts below, based upon the legal and documentary evidence. That finding of fact remained unassailable. There is nothing on record to show that both the

courts below have misread and misinterpreted the evidence or the pleadings of parties. There is nothing on record that both the courts below have decided the case beyond the pleadings.

Learned counsel for the appellant could not point out as to which part of the cross-examination has not been taken into consideration.

So, in view of the above discussion, I have no hesitation in holding that no question of law much less substantial question of law has arisen in the present appeal. The questions of fact cannot be agitated in regular second appeal in view of Section 100 C.P.C. Consequently, the appeal is without any merit and the same stands dismissed.

MARCH 13, 2015
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(K. C. PURI)
JUDGE