IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 *C.M. No. 6718 of 2015*
RSA No. 2627 of 2015 (O&M)

Date of decision: 14.10.2015

Sukhbir

....APPELLANT

VERSUS

Sarva Haryana Gramin Bank and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Faridabad dated 30.07.2013, vide which the suit for declaration with consequential relief of permanent and mandatory injunction restraining the respondents-defendants from recovering an amount of ₹ 1,37,761/- along with interest as on 30.06.2006 on the basis of notices dated 13.08.2005 and 22.08.2006, stands dismissed, against which an appeal preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Faridabad on 22.12.2014.

It is the contention of the learned counsel for the appellant that the loan amount of ₹ 2 lacs, which was taken by the appellant-plaintiff for the purchase of a tractor on 11.04.1998, has been duly returned to the respondent-Bank. The dispute primarily relates to a receipt dated 18.10.2000 Ex. P3 amounting to ₹ 60,000/-. He contends that the said amount having been duly paid, the same should have been credited by the bank in his loan amount and, therefore, the said amount and the interest thereof cannot be recovered from the appellant-plaintiff. He further contends that an application under Order 41 Rule 27 CPC was moved by the appellant-plaintiff before the trial Court as also before the learned Lower Appellate Court for leading additional evidence to produce a Handwriting and Finger Print Expert to prove that the signatures on the receipt Ex. P3 were that of the bank official whom he had handed over the said amount at his home and an acknowledgment of the said receipt was given to him. The said application has wrongly been rejected by both the Courts below and, therefore, he contends that the said application be allowed and the appellant be given an opportunity to lead his evidence, as prayed for. Accordingly, the prayer has been made for setting aside the judgments and decree passed by the Courts below and for decreeing the suit.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below.

First dealing with the application moved by the appellant-plaintiff under Order 41 Rule 27 CPC for leading additional evidence, which has been rejected by the Courts below, suffice it to say that the learned Courts below have rightly rejected the said application. The said rejection has been challenged by the appellant in this Court by way of a revision petition, which was dismissed by this Court on 15.02.2013. That apart, the other aspect, on which the application for additional evidence could not be permitted which has been taken into consideration, is that at a belated stage, when the evidence has been led, by the respondents, the same could not be allowed. There is nothing to suggest that the recourse, which is being sought to be made by the appellant-plaintiff for producing a Handwriting and Finger Print Expert, could not have been taken with due diligence at the very outset. He was leading his evidence in the affirmative. Since that has not been done, the application has rightly been rejected.

That apart, the bank has also not taken as if the receipt was merely denied to have been issued by any of its officials rather it has produced a Handwriting and Finger Print expert who appeared as DW5 and stated in his report, which has been duly proved, that the receipt, which has been produced by the appellant-plaintiff, does not bear signatures of the officials, who were working in the bank at that relevant time i.e. G.R.Sharma, I.P.Sharma, S.R.Singh, D.D.Sharma, U.R.Yadav, A.N.Adkhlakha and C.S.Lamba. The case of the appellant-plaintiff was that the payment was made to the bank official in the presence of another bank official, namely, Inder Pal but no complaint, which is alleged to have been submitted to the local police against Inder Pal, the bank official, has been brought on record. Inder Pal, against whom the allegations have been made with regard to he being present at the time when the receipt was issued, had denied this fact. No evidence has been brought on record, which would support the assertions of the appellant-plaintiff with regard to he having paid an amount of ₹ 60,000/- on 18.10.2000 vide receipt Ex. P3.

The findings, as recorded by the Courts below, are in accordance with the pleadings and the evidence on record and on proper appreciation thereof.

There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be just and reasonable, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 14, 2015
pj