

RSA No. 2927 of 2015 (O&M)

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

RSA No. 2927 of 2015 (O&M)

Date of Decision: September 02, 2015

Saroop Singh

...Appellant

Versus

Rattan Singh (dead) through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Keshav Pratap Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM-7081-C-2015

Prayer in this application is for condonation of delay of 52 days in refiling the appeal.

The reason for delay is stated to be the non-availability of the requisite amount to deposit the full Court fee and on the receipt of the same, the appeal was refiled, which has resulted in the delay of 52 days in refiling the appeal. The application is supported by an affidavit.

For the reasons mentioned in the application, the same is allowed. Delay of 52 days in refiling the appeal, stands condoned.

CM-7082-C-2015

Prayer in this application is for making good the deficiency in Court fee.

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In the application, it has been stated that inadvertently, less Court fee was affixed and on the Registry having pointed out the deficiency in not paying the required Court fee, requisite Court fee stamps were submitted/affixed and as of now, there is no deficiency in the Court fee. The application is supported by an affidavit.

The present application is, therefore, allowed. The deficient Court fee is permitted to be made good.

RSA-2927-2015

Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby, the suit of the respondent-plaintiff for recovery of ₹8,00,000/- has been decreed and the appeal preferred by the appellant-defendant, stands dismissed.

It is the contention of the counsel for the appellant-defendant that the suit of the respondent-plaintiff was barred by limitation as according to the admitted facts, the amount was handed over to the appellant-defendant in January, 2001 by the respondent-plaintiff on the assertion that he was a Travel Agent and had promised to send the plaintiff's son abroad which he failed and thereafter, to discharge his debt, the appellant-defendant had issued cheque of ₹8,00,000/- bearing No.279096, dated 17.10.2007, from his Account No. SB-7325, drawn on Bank of Punjab, Branch Nawanshahar. He contends that since the amount has been given to the appellant-defendant in the year 2001, the suit could have been filed within a period of three years as per Section 18 of the Limitation

Act. The suit has been filed on 16.11.2009 which is barred by time, could not have been entertained and should have been dismissed as barred by limitation. He also asserts that the respondent-plaintiff has failed to prove that the appellant-defendant was a Travel Agent nor has he been able to prove the handing over of ₹8,00,000/- in the year 2001. He asserts that no cheque was given by the appellant-defendant in the year 2007 and the signatures on the cheque are not his. On these basis, he has challenged the findings recorded by the Courts below.

I have considered the submissions made by the counsel for the appellant-defendant and have gone through the judgments passed by the Courts below.

It is correct that as per the assertion of the respondent-plaintiff, the amount was handed over to the appellant-defendant in January, 2001 but the fact remains that as per the case of the respondent-plaintiff, as the appellant-defendant failed to send his son abroad, he, in acknowledgment of his debt, has issued a cheque on 17.10.2007. As per the provision of Section 25 (3) of the Indian Contract Act, the suit which has been filed, cannot be said to be barred by limitation. The law in this regard has rightly been appreciated by the Courts below and applied. Reliance in this regard placed on the conclusions and observations recorded in para 15 of the judgment of Bombay High Court in Dinesh B. Chokshi Vs.

Rahul Vasudeo Bhatt & another 2013 (2) Civil Court Cases 017

(Bombay), as has been reproduced, cannot be faulted with.

Counsel for the appellant has placed reliance upon the judgment of **A.V. Murthy Vs. B.S. Nagabasavanna, 2002 (1) RCR (Criminal) 745** to assert that the suit would be barred by limitation and Section 25 (3) of the Indian Contract Act, would not be attracted, is misplaced. This judgment rather goes against him as is apparent from the observations made on this aspect in para 5 thereof, where, in fact, the Hon'ble Supreme Court has referred to sub-Section 3 of Section 25 of the Indian Contract Act, 1872 and has accepted that the time barred debts also can be enforceable in the light of the subsequent acceptance/ acknowledgment of liability. It is not disputed that from the date of issue of the cheque on 17.10.2007, the suit has been filed within limitation. The findings, thus, recorded by the Courts below with regard to the suit being within the limitation cannot be faulted with.

The assertion of the counsel for the appellant-defendant that the respondent-plaintiff has failed to establish that he was a Travel Agent and the money had exchanged hands, would not be of any consequence as there is no explanation on the part of the appellant-defendant with regard to the issuance of the cheque in question which has been duly proved. That apart, the denial of the signatures by the appellant-defendant on the cheque also cannot be accepted as the respondent-plaintiff has been able to prove on the

basis of the evidence and in fact, admission that the cheque book and cheque leaf were of the account of the appellant-defendant. Since the appellant-defendant had denied his signatures, the onus was on him to prove that the cheque did not bear his signature but unfortunately, he did not produce any expert evidence in support of this assertion of his. Further, the cheque has been returned by the bank not on the ground that the signature on the cheque is not of the appellant-defendant but because of insufficient funds. Signing and issuing cheque in favour of the respondent-plaintiff would amount to owing and acknowledging the liability by the appellant-defendant. All these go to prove beyond doubt that the appellant-defendant had acknowledged and accepted his debt.

Both the Courts below have returned concurrent findings after proper appreciation of evidence which do not call for interference as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 02, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**