

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.3485 of 2015 (O&M)

.....

Date of decision:28.7.2015

Shivam and another

.....Appellants

v.

Sukhdev Singh

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gursimran Singh, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by Shivam and Shubham-appellants/defendants against Sukhdev Singh-respondent/plaintiff challenging the impugned judgment and decree dated 12.2.2015 passed by the learned District Judge, Moga, vide which the appeal filed by the plaintiff against the impugned judgment and decree dated 3.7.2014 passed by learned Civil Judge (Junior Division), Moga, dismissing the suit of the plaintiff, has been allowed and the suit of the plaintiff has been decreed.

The brief facts of the case are that Sukhdev Singh-plaintiff filed suit against Shivam, Shubham and New Arora Plastic-defendants for recovery of ₹1,07,000/- on the basis of writing/receipt dated 16.5.2012. It is stated that Pawan Kumar Arora approached the plaintiff for advancement of loan of ₹1,00,000/- as the plaintiff has good relation so he agreed to give the

said amount. Pawan Kumar Arora executed a writing/receipt of ₹1 Lac on the letter pad of the firm, namely, New Arora Plastic on 16.5.2012. After receiving the amount, he also promised to repay the said amount with interest thereon @1% per month. Pawan Kumar Arora in the capacity of sole proprietor of New Arora Plastic had issued cheque No.008737 dated 21.6.2012 for ₹1 Lac drawn on Union Bank of India, but the same has been dishonoured vide memo dated 13.9.2012. The said Pawan Kumar Arora did not return any amount during his life time either from the principle or the interest. After the death of Pawan Kumar Arora, the defendants are the legal heirs and successors of deceased and thus, they are liable to pay the amount in dispute both in law and equity, as they have inherited the estate of the deceased.

On the other hand, the case of the defendant in the written statement is that father of the defendant was not having any business and his business of the defendant had also failed. They further submitted that the said story of advancement of loan is false, frivolous and concocted and has concocted just to harass the defendants, who are orphans in the real sense, as before the death of their father, their mother had expired. It is also the case of the defendants that the receipt is forged and fabricated document. Pawan Kumar Arora never took loan from the plaintiffs.

The learned Civil Judge (Junior Division), Moga, after framing the issues and after the parties led the evidence dismissed the suit of the plaintiff vide judgment and decree dated 3.7.2014. Aggrieved from this judgment and decree, the plaintiff filed an appeal before the District Judge,

Moga, who vide judgment and decree dated 12.2.2015 accepted the appeal and decreed the suit of the plaintiff for ₹1 Lac along with interest @6% per annum. Aggrieved from the judgment and decree passed by the learned District Judge, Moga, the appellants-defendants have filed this regular second appeal.

At the time of arguments, learned counsel for the appellants argued that the judgment and decree passed by the learned District Judge, Moga are not as per evidence and law. The plaintiff has failed to show that the amount even as per the receipt was given as a loan. He also argued that the plaintiff failed to show that Pawan Kumar Arora had agreed to pay any interest.

After hearing leaned counsel for the appellants and going through the record, I find that it is correct that there is no document on record to show that Pawan Kumar Arora, predecessor of the defendants agreed to pay the amount along with interest @1% per month. As per receipt Ex.P.1 it was simply written that received a sum of ₹1 Lac from Sukhdev Singh son of Gurbax Singh, resident of House No.1839, Ward No.6, Moga. This receipt is on the letter pad of New Arora Plastic, which is the firm stated to be owned by Pawan Kumar Arora. There is no denial by the defendants that this firm was not owned by Pawan Kumar Arora. Secondly, it is no where the case of the appellants-defendants that this letter pad is not of their firm and it has been forged by the plaintiff. I find that this receipt has been duly stamped and signed by Pawan Kumar Arora. The plaintiff has alleged that Pawan Kumar Arora has signed the same after

receiving ₹1 Lac. Even on this receipt, cheque No.008737 of Union Bank of India has been mentioned. The plaintiff has also produced cheque Ex.PX which was given by Pawan Kumar Arora to the plaintiff. The statement of the plaintiff is duly supported and corroborated by oral evidence of the plaintiff as well as by the documents i.e. receipt Ex.P.1 and cheque Ex.PX. There is no rebuttal evidence produced by the defendants to show that these signatures are not of Pawan Kumar Arora nor there is any witness that this letter pad is not of their firm. There is also no evidence produced by the appellants that the cheque in question does not belong to the account of Pawan Kumar Arora and the cheque book has not been issued to Pawan Kumar Arora by the Bank. Admittedly, the present defendants, who are LR's of Pawan Kumar Arora, were not present at the time of transaction.

Therefore, the findings of fact given by the learned District Judge, Moga, vide judgment and decree dated 12.2.2015 are correct and as per evidence. Nothing has been pointed out as to which evidence has been misread by the first appellate Court. There is also nothing on the record that the findings given by the District Judge are perverse or against the evidence. The findings given by the learned Civil Judge (Junior Division), Moga are not as per evidence. In no way, it can be held that the plaintiff has not proved the case by leading cogent evidence. The documentary evidence cannot be ignored. Rather, it supports the version of the plaintiff.

Therefore, from the above, I find that the judgment and decree dated 12.2.2015 passed by the learned District Judge, Moga, is correct, as per law and evidence on record, which do not require any interference from

this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

July 28, 2015.

(Inderjit Singh)
Judge

hsp