

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3575 of 2015 (O&M)
Date of decision 17.08. 2015.

Baj Singh

..... Appellant.

versus

Vijay Kumar Kaura

..... Respondent.

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

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. A.P.Kaushal, Advocate for the appellant.

K.C.PURI, J.

C.M. No.8678-C of 2015.

For the reasons mentioned in the application, delay of 55 days in filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN APPEAL

Baj Singh defendant-appellant has directed the present appeal against the judgment and decree dated 06.01.2015 passed by Mrs. Mandeep Kaur, Additional District Judge, Kapurthala vide which the appeal preferred by defendant/appellant against the judgment and decree 14.11.2013 passed by Shri Amit Thind, the then learned Civil Judge (Senior Division), Kapurthala was dismissed.

2. Brief facts of the present case are that defendant obtained a loan of Rs.3,20,000/- from the plaintiff/respondent on 01.08.2008 and the appellant/defendant executed a pronote and receipt in the presence of witnesses, on the same day in favour of the respondent/plaintiff in token thereof. The appellant-defendant agreed to pay an interest @ 2%p.m. on the loan amount. The appellant-defendant also agreed to return back the loan amount along with agreed interest, on demand by the respondent-plaintiff. The respondent-plaintiff had always making the appellant-defendant aware of the interest accrued on the loan amount from time to time. The respondent-plaintiff and requested for the return of loan amount alongwith agreed interest but he had always been lingering on the matter on one pretext or the other. The respondent-plaintiff is also claiming interest at the rate of 1%, as the appellant-defendant had wrongly retained the amount in question, as such as per Negotiable Instrument Act, the respondent/plaintiff also got served the appellant-defendant with a legal notice dated 02.07.2010 with a request to return the loan amount along with interest, which was duly received by him, but in-spite of that the appellant-defendant had failed to return the loan amount, hence this suit.

3. Notice of the suit was given to the defendant-appellant, who appeared and filed written statement taking preliminary objections that the respondent-plaintiff has no cause of action to file the original suit as the respondent-plaintiff has not come to the court with clean hands and he has suppressed the real facts from this court. In fact the respondent-plaintiff is running a commission agency shop under the name and style of M/S Vijay

Kumar and Sons at shop No.49, New Grain Market, Kapurthala. The appellant-defendant used to sell his agriculture produce at the aforesaid shop of the respondent-plaintiff. At the time of making payment of the agricultural produce of the appellant-defendant, the respondent/plaintiff used to obtain thumb impression of the appellant-defendant on various blank papers, forms, stamp papers register etc. on the pretext of entries in their record. The appellant/defendant in good faith used to put his thumb impression at the instance of plaintiff-respondent. Respondent-plaintiff used to issue some j-forms and some Kachhi Parchi to the appellant-defendant towards part payment of agricultural produce of the appellant-defendant. However, in the year 2004, the appellant-defendant sold his agriculture produce to the respondent-plaintiff for an amount of Rs.51,150-59, for which the respondent-plaintiff duly issued a J-Form, but the payment of the same was not made to the appellant/ defendant by respondent/plaintiff. The appellant/defendant time and again requested the respondent/plaintiff to make the payment, but the respondent/plaintiff kept on lingering on one pretext or the other, but did not make the payment. Ultimately, the appellant-defendant stopped selling his crop to the respondent-plaintiff. Furious from this fact, the respondent/plaintiff had fabricated the original pronote and receipt and filed the present suit against the appellant/defendant. Whereas, the appellant/defendant had never executed any pronote and receipt in favour of the respondent-plaintiff nor ever obtained any loan from respondent-plaintiff vide said pronote and receipt, rather the respondent-plaintiff is liable to make the payment of the

J-form dated 05-10-2004 to the appellant-defendant towards sale of his agriculture produce. The respondent-plaintiff had prepared the pronote and receipt in connivance with scribe and marginal witnesses. On merit, remaining all averments have been denied and lastly a prayer for dismissal of the original suit has been made.

4. Replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to recover the principal amount of Rs.3,20,000/- from the defendant ?OPP
2. Whether the plaintiff is entitled to interest. If so at what rate and to what extent ?
3. Whether the suit is not maintainable in the present form ?
4. Whether the plaintiff has got no locus standi and cause of action to file the present suit ?OPD
5. Whether the plaintiff has not come to the Court with clean hands ?OPD
6. Relief.

5. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence dismissed the suit of the plaintiff vide judgment and decree dated 14.11.2013.

6. Feeling aggrieved, the plaintiff preferred First appeal of order. The learned Additional District Judge, Fatehabad vide judgment and decree dated 06.01.2015 also dismissed the appeal of the plaintiff.

7. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the

plaintiff/appellant.

8. The appellant in paragraph No.10 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- i) Whether the judgment and decree dated 06.01.2015 and 14.11.2013 are illegal, arbitrary and without jurisdiction ?
- ii) Whether the respondent/plaintiff is entitled to recover the amount of Rs.3,96,000/- from the appellant ?
- iii) Whether the respondent/plaintiff is authorized to lend money without having license for the same ?
- iv) Whether the appellant has executed pronote dated 01.08.2008 ?
- v) Whether the Ld. Courts below have failed to evaluate the evidence on record ?
- vi) Whether the respondent/plaintiff are liable to pay an amount of Rs.51150-59 to appellant against the J-form dated 05.10.2004 ?
- vii) Whether the respondent/plaintiff and witnesses are bounds by the admissions made by them ?
- viii) Whether law of estoppel is applies to the respondents ?
- ix) Relief.

9. Learned counsel for the appellant has submitted that suit of the plaintiff is not maintainable in as much as no money lending licence has been produced by the plaintiff. In the absence of the money lending licence, the suit for recovery is not maintainable.

10. I have carefully considered the said submission but do not find any force in that submission.

11. In case, Commission Agent lend some amount to his customer, it does not amount to money lending business. In the villages, it is a custom to lend money to be adjusted at the time of sale of crop. In fact that amount is given in advance in anticipation of sale of crop. That transaction cannot be said to be any money lending transaction. The case of the plaintiff is based upon pronote and receipt dated 01.08.2008. The plaintiff has proved the due execution and passing of transaction through the pronote and receipt. The stand taken by the defendants is that amount is payable by the plaintiff to the defendants in respect of sale of the produce but no documentary evidence in this regard has been produced. So, the concurrent finding of fact recorded by both the Courts below that plaintiff has advanced an amount of Rs.3,20,000/- on 1.8.2008 is based upon cogent evidence. There is nothing on the record to show that said finding is the result of misreading and misinterpreting the evidence on the file. The defendant has failed to prove that plaintiff owe any amount to the defendant in respect of sale of his produce. So, I have no hesitation in holding that no question of law has arisen in the present appeal and the substantial questions of law mentioned above do not exist at all.

14. Consequently, the present appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 17, 2015
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