

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

R.S.A. No. 1859 of 2014 (O&M)

Date of decision:- 16.07.2015

Jaswinder Singh

...Appellants

Versus

Gurmail Kaur

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. H.S. Tuli, Advocate for Mr. S.S. Rang, Advocate
for the applicant/appellant

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 4532-C of 2014

For the reasons mentioned in the application, delay of 14
days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A. No. 1859 of 2014

This regular second appeal is directed against the
concurrent findings of facts recorded by both the Courts below
whereby the suit of the husband-Dalip Singh (now deceased) of the
plaintiff-respondent (herein after to be referred as 'the respondent')
was decreed for recovery of Rs.4,00,000/- from the appellant along

with interest @ 12% per annum.

Brief facts of the case put forth by Dalip Singh(since deceased) that appellant was the sole owner of M/s Dashmesh Filling Station, Village Saheri, Tehsil and District Ropar and he approached him to become share holder to the extent of 5% in the petrol pump owned by the appellant and requested Dalip Singh to advance him Rs.4 lacs in order to become co-sharer in the above mentioned petrol pump. After receiving Rs.4 lacs from Dalip Singh, the appellant agreed to join him as co-sharer to the extent of 5% in the profit and loss of the petrol pump. It was decided that all the accounts of the said pump would be settled within first week of the month regarding its expenses i.e wages of the servants, electricity bill, telephone bill, newspaper, tea etc and after deducting the said expenses from the income received from the running of the said petrol pump, the balance of profit and loss would be struck. Dalip Singh was not entitled to transfer his share to anybody nor he would make any person the share holder to the owner if any necessity arose and its price would be settled in that case. It was also agreed that appellant can given back of Rs.50,000/- from the share at the time of withdrawing from the share of profit and loss would be struck. The appellant issued two cheques of Rs.1 lacs each dated 19.04.2004 and 27.01.2005 of State Bank of India, Branch Morinda from the account of Dashmesh Filling Station as its proprietor

in favour of the respondent but at the same time requested not to present the same for collection and encashment as there was shortage of amount in the account of the appellant. To this effect, appellant executed an agreement in favour of Dalip Singh on 01.01.2004 after receiving Rs.4 lacs from him in the presence of witnesses. Dalip Singh also requested to render the account in the month of September, 2007 then it came to the knowledge of Dalip Singh that the appellant has sold the said petrol pump to somebody else and refused to render the account to him. Dalip Singh requested the appellant to make the payment of Rs.4 lacs along with interest but he refused to make the payment.

On notice, the appellant appeared and filed its written statement and submitted that he originally belongs to Village Anian, Tensil Amloh and the father of Dalip Singh were on good terms and used to help each other during the hard days. The appellant has been running business at Amloh and Bhadson and other places. The father of Dalip Singh was an agriculturist at Village Naraingarh, Tehsil Amloh and there was dealing with the father of Dalip Singh. During the year 1995-96, the appellant took financial help of Rs.1 lacs from Dalip Singh at different time. The accounts were struck between Dalip Singh and the appellant and a sum of Rs.1,50,000/- was paid to the father of Dalip Singh and the accounts were finally settled. The father of Dalip

Singh used to obtain the signatures of the appellant on some blank papers on the pretext that it is only record for 'Yaddasat' of the dealing. The appellant never entered into agreement with Dalip Singh to join him in the business of the appellant or dealership of the petrol pump. Dalip Singh might have used the signatures of the appellant, which have been taken by his father on blank paper.

P.W.1 Gurmail Kaur wife of Dalip Singh has reiterated the facts as mentioned in the plaint and proved the original agreement Ex P1 and the cheques Ex P2 and P3. In cross examination, she specifically deposed that she has not filed suit against Dashmesh Filling Station and Ex P1 was not scribed and signed in her presence.

P.W.2 Kuldeep Singh one of the attested witness witnesses of the said agreement dated 01.01.2004 vide affidavit Ex PW2/A deposed with regard to the same as per case of the respondent against the appellant apart from identifying his signatures on the same.

Appellant Jaswinder Singh examined himself as D.W.1 and denied his signatures at point Mark A and B on the agreement dated 01.01.2004, cheques (Ex P2 and P3) but did not dare to compare the same with his standard signatures to prove that the same were not appended by him. He admitted his signatures on his affidavit Ex DW1/A, written statement, summons, affidavit dated 15.04.2009, application dated 22.04.2008. The appellant alleged that the petrol

pump was sold by him to Kulbir Singh vide power of attorney but he did not bring power of attorney on record to prove the same.

Both the Courts below decreed the suit of the respondent and held that the suit was filed well within time and the cheques (Ex P2 and P3) were duly signed by the appellant and the on the cheques, there was a stamp of Dashmesh Filling Station. The plaintiff had duly proved the execution of the agreement dated 01.01.2004 by examining herself and the marginal witness Kuldeep Singh and the misuse of the signatures on the blank paper by the respondent, was not proved by the appellant. The appellant has not led any evidence to show that the agreement was forged and fabricated.

Thus, no fault can be found with the findings rendered by the Courts below, which are based on fact and law. There is no illegality much less perversity in the findings recorded by the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

16.07.2015

G Arora

(**RITU BAHRI**)
JUDGE