IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.508 of 2015 (O&M)
Date of Decision: 10.02.2015

Arun Oswal and Anr. ....Appellants

Vs.

Anil Kumar Jain ....Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present:- Mr.Manish Kumar Singla, Advocate for the appellants.

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MAHAVIR S. CHAUHAN, J. (ORAL)

CM No.1413-C of 2015

This application has been filed under Section 149 Code of Civil Procedure, 1908 (for short-'CPC') read with Section 151 CPC allowing the applicants to make good the deficiency of Court fee.

Learned counsel for the applicants/appellants states that requisite Court fee has already been paid and as such, he does not press this application.

Dismissed as not pressed.

RSA No.508 of 2015

Civil Suit No.173 of 2011 brought by the respondent against the appellants for recovery, having been decreed by learned Additional Civil Judge (Senior Division), Panchkula (for short 'trial Court) vide judgment/decree dated 24.04.2014 appellants preferred Civil Appeal No.161 of 2014, which has been dismissed by learned Additional District Judge, Panchkula, (for short-'the first appellate Court') vide judgment/decree dated 22.09.2014. To assail correctness of the concurrent findings so recorded by the courts below, appellants have approached this Court by way of the instant regular second appeal.

Though the appeal is barred by time as regards its refiling but I have heard learned counsel for the appellants on merits.

It is argued by learned counsel for the appellants that the respondent is a money lender and an amount of ₹7,50,000/- was borrowed by the appellant No.1 from him and as a security for repayment of the loan amount a cheque for ₹6 lacs was issued by the first appellant in favour of the respondent which he did not return even though the loan amount was repaid by the appellant with interest. However, according to the learned counsel, both the courts below have failed to take notice of this aspect of the matter while decreeing respondent's suit for recovery of the suit amount.

Nothing more has been urged.

Case of the respondent before the learned trial Court was that appellants had agreed to sell a property bearing House No.441, Sector-7, Panckula, to him for a consideration of ₹75 Lacs. An amount of ₹3,00,000/- was paid by him to the appellants as earnest money. Another amount of ₹4,50,000/- was to be paid by him to the appellants lateron, to bring the earnest money to ₹7,50,000/- However, respondent came to know that the appellants were not owners of the property in question and when confronted with this fact they issued a post dated cheque dated 01.09.2008 in the sum of ₹6,00,000/- towards return of the amount of earnest money and interest etc. thereon. The cheque, however, was returned by the bankers of the appellants vide cheque return memo dated 09.02.2009 with the remarks 'funds insufficient'. This prompted him to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act'), and the instant suit for recovery of the aforestated amount with interest.

Suit was contested by the appellants by filing a joint written statement wherein, while denying all the allegations contained in the plaint, they came out with a plea that the respondent had asked appellant No.1 to append his signatures on some documents and to hand over one post dated cheque to him when said appellant had approached the respondent in the year 2005 for advancement of loan of Rs.75,000/- Being hard pressed, said appellant not only issued the cheque in question but also wrote on the back of it about execution of the agreement to sell and its cancellation in view of a compromise between the parties. As he could not repay the loan amount, the cheque was revalidated. But later on the loan amount was paid by him vide Cheque No.374151 dated January 20, 2009 for an amount of Rs.80,000/- drawn on Indian Bank, Chandigarh; Cheque No.897457 dated 04.02.2009 and cheque No.897459 dated 07.03.2009 for Rs.20,000/- each, drawn on Indian Bank, Manimajra, in the name of his daughter. But the respondent instead of returning the post dated cheque made material alterations therein and misused it to file a complaint under the Act besides the instant suit.

Parties were put to trial on the following issues:-

> *"1. Whether the plaintiff is entitled for recovery of Rs.7,44,000/- from defendants as principal ₹6 Lacs and interest on the principal amount of ₹6 Lacs @ 8% per annum w.e.f. 01.09.2008 to 31.08.2011 on account of earnest money paid to them and its return along with the damages to the plaintiff by way of a cheque No.918402 dated 01.09.2008 from the date of filing of the suit till its realisation as claimed? OPP*

2. Relief.

After evidence on both the sides was complete, learned trial Court afforded the parties an opportunity of hearing and appraised the evidence available on record to reach a conclusion that the plea putforth on behalf of respondent was meritorious while the one put up on behalf of appellants was unbelievable and accordingly decreed respondent's suit. The findings so recorded by the learned trial Court have been affirmed by the learned first Appellate Court.

A perusal of the impugned judgments would reveal that a cheque (Exhibit P-2) for an amount of ₹6 lac was issued by appellant No.1 and on its back it was written by him that this amount was in lieu of cancellation of agreement to sell and return of the earnest money. Appellants have admitted the issuance of cheque for ₹6 Lacs in favour of the respondent and the endorsement on the back of cheque, Exhibit P2, has also not been denied by him. The story put up on behalf of the appellants that the cheque for ₹6 Lacs was issued as security in respect of loan amounting to ₹75,000/- statedly received by them from the respondent, has been rightly found to be unacceptable and unbelievable by the courts below because it is highly unbelievable that to secure a loan amounting to ₹75,000/- a post dated cheque for Rs.6 Lacs would be issued by the appellants and then an endorsement could be made on the back of it with regard to cancellation of agreement to sell and return of earnest money. It shows that the appellant had issued the cheque to return the earnest money as a consequence of cancellation of agreement to sell. It is also unbelievable that the appellants would keep silent as regards retrieval of the aforesaid post dated cheque, even though they claim to have returned the loan amount.

In view of the above, coupled with the fact that this appeal is not shown to involve any question of law, much less a substantial one I regret my disinclination to interfere with the concurrent and pure findings of fact recorded by the Courts below.

Before parting with this judgment it needs to be added that an application is brought by the appellants under Rule 27 of Order XLI CPC to bring on record certified copies of complaints dated 06.01.2003 titled 'Anil Jain Vs. Ajay Dhall' dated 24.11.2011 titled "Anil Jain Versus Sudhir Sood etc' dated 06.12.2011 titled 'Anil Jain Vs. Sudhir Sood etc.' dated 10.10.2013 titled 'Anil Jain Versus Vinod Kumar Dogra', along with certified copy of grounds of appeal dated 30.10.2012 titled 'Anil Kumar Jain Versus Om Parkash Gupta etc.' as also a copy of judgment dated 15.02.2013 passed by learned Sessions Judge, Panchkula, and an uncertified copy of complaint dated 10.10.2013 titled 'Anil Jain Vs. Rohit Kalra' by way of additional evidence. However, learned counsel for the appellants has not been able to show why these documents could not be brought on record during pendency of first appeal and how are these relevant for disposal of the instant appeal. Resultantly, the application to lead additional evidence also deserves to be dismissed.

Consequently, the appeal and the application to lead additional evidence are dismissed being without merit.

No costs.

(MAHAVIR S. CHAUHAN)
JUDGE

10.02.2015
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