

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

104

Regular Second Appeal No.2840 of 2014 (O&M)

Date of Decision: December 03, 2015

Bant Singh

...Appellant

Versus

Gurwinder Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Kamaldip Singh Sidhu, Advocate  
for the applicant-appellant.

**AUGUSTINE GEORGE MASIH, J. (ORAL)**

**CM No.6772-C of 2014**

Prayer in this application is for condonation of delay of 103 days in re-filing the appeal.

The reason assigned for the delay is that after the filing of the appeal, Registry had raised some objections and due to inadvertence, the office file of the case was put in the bunch of decided cases. Case was traced out and then re-filed, which resulted in delay of 103 days in re-filing the appeal. The application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is allowed.

Delay of 103 days in re-filing the appeal stands condoned.

**CM No.5677-C of 2015**

Prayer in this application is for placing on record the documents Annexures A-1 to A-3, which according to the counsel for the applicant-appellant, is a part of the Lower Appellate Court record. The same is supported by the affidavit of the applicant-appellant.

Prayer made in the application is allowed.

Annexures A-1 to A-3 are taken on record subject to just exceptions.

**CM No.14119-C of 2015**

Prayer in this application is for placing on record order dated 29.09.2015 as Annexure A-4 and judgment dated 03.03.2015 as Annexure A-5.

Application is allowed.

Annexures A-4 and A-5 are taken on record subject to just exceptions.

**RSA No.2840 of 2014**

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Fatehgarh Sahib, dated 01.09.2012, by which the suit for recovery preferred by the respondent-plaintiff, stands decreed holding the respondent-plaintiff entitled to recover a principal sum of ₹1,50,000/- advanced as loan on 15.10.2004 from the appellant-defendant along with interest at the rate of 9% per annum on the principal amount from 15.10.2004 till the date of passing of the decree with further future interest at the rate of 6% per annum from the date of passing of the decree till realisation, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Fatehgarh Sahib, on 12.08.2013.

2. It is the contention of learned counsel for the appellant that the blank papers have been utilised by the respondent-plaintiff for forging and fabricating the document in the form of a pronote and receipt to give it a shape of loan and then filed a recovery suit against him. He contends that

there was fiduciary relationship between the parties as the appellant-defendant is a farmer and had been selling his crops to the respondent-plaintiff, who is running a commission agency and in the routine, signatures were obtained of the appellant-defendant on blank papers. Counsel for the appellant states that the trial Court should have tried the case instead of closing the evidence by order dated 28.08.2012 taking into consideration the fact that the appellant-defendant had given his kidney in transplant in the year 2009 as a donation to his son, who suffered from a renal failure. Thereafter his son had further undergone second transplant on 22.04.2011 and, therefore, could not pursue his case, thus, prays that one more opportunity may be granted to the appellant-defendant to lead evidence so that the correct position could be placed on record and the stand taken in the written statement could be established. In support of this contention, he has placed reliance upon the judgment passed by Hon'ble Supreme Court in case titled as ***Salem Advocate Bar Association, Tamil Nadu Versus Union of India 2005(3) R.C.R. (Civil) 530*** and the judgment passed by this Court in ***Regular Second Appeal No.3123 of 2009 titled as Gurvinder Singh Versus Government of India and others***, decided on 21.05.2010. He, thus, prays that the present appeal may be allowed.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments passed by the Courts below.

4. The contention as raised by the counsel for the appellant cannot be accepted with regard to the stand of the appellant-defendant for granting one more opportunity to lead evidence as no evidence has been led by him in support of his assertions in the written statement. The judgments on

which reliance has been placed by the counsel for the appellant i.e. *Salem Advocate Bar Association's case and Gurvinder Singh's case (supra)*, would not be applicable to the case in hand. As a matter of fact and as recorded by the Lower Appellate Court, the case was fixed for evidence of the appellant-defendant on 06.09.2011 and then on 28.11.2011, after that, he had availed of eight opportunities including last and final opportunity as well as subject to payment of costs on three occasions. Faced with this situation, the trial Court was constrained to close the evidence due to the reason that neither cost has been deposited nor has any list of witnesses produced on record. The argument of learned counsel for the appellant that he could not pursue his case because of the ailment of his son, who was suffering from kidney failure, for which initially he had donated his kidney in the year 2009 and thereafter a second transplant of the kidney took place in April, 2011, also cannot be of any avail as the case was fixed for evidence of the appellant-defendant on 06.09.2011, which is almost five months after the second transplant operation of the son of the appellant-defendant had taken place, thereafter it was listed in the end of November, 2011. Apart from that, eight other opportunities were also availed by the appellant-defendant, which has been mentioned above including imposition of costs, which was neither deposited nor the list of witnesses produced. The reason, as has been tried to be projected by the counsel for the appellant, thus, cannot be accepted for giving further opportunity to the appellant-defendant to lead his evidence.

5. Perusal of the impugned judgments would show that the respondent-plaintiff has been able to prove the execution of the pronote. In the facts and circumstances of the present case, the judgments passed by the Courts below, cannot be faulted with as the Courts have taken into

consideration the pleadings and the evidence led by the parties in the right perspective.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.14120-C of 2015, stands disposed of as infructuous.

**December 03, 2015**  
*Puneet*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**