IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 4286 of 2014 (O&M)
Date of decision: 28.4.2015

Shiv Kumar

.. Appellant

v.

Gurmeet Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjay Mittal, Advocate for the appellant.

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Rajesh Bindal J.

The plaintiff is before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by him for recovery, was dismissed.

The suit was filed by the appellant under Order 37 CPC for recovery of ₹ 68,440/-, i.e., ₹ 59,000/- as principal and ₹ 9,440/- as interest on the basis of cheque dated 1.3.2008 issued by late Hari Singh (deceased), now represented through his legal heirs, in favour of the appellant for a sum of ₹ 59,000/-. It was claimed that deceased-Hari Singh approached the appellant for loan for his business. The same was advanced in October, 2007. For returning the same, a post-dated cheque was issued by late-Hari Singh. As despite repeated requests, the loan amount was not returned, the suit was filed. As Hari Singh had died by that time, he was represented through his legal heirs. They denied that Hari Singh ever took loan from the appellant or had issued the cheque. Both the courts below did not find any merit in the claim made by the appellant and dismissed the suit.

The first and foremost important fact in the case in hand is that the plaintiff never appeared in court. He was represented by a power of attorney holder. There were discrepancies in his statement. He claimed that late-Hari Singh approached him for advancing the loan, however, he called Shiv Kumar-plaintiff, who lent the money to deceased-Hari Singh. To secure repayment, a post-dated cheque was issued by Hari Singh in the name of Shiv Kumar. In the evidence led by the defendants-respondents, while producing the counter foil of cheque No. 888070, which was allegedly issued by late-Hari Singh in favour of the appellant, the name of the payee was mentioned in Urdu script as Ram Parkash Bansal and not Shiv Kumar, which established that no loan was ever advanced by Shiv Kumar. Shiv Kumar failed to step into the witness-box to get his statement recorded or face cross-examination. Not only this, Ram Parkash Bansal, while appearing as PW-1 as attorney of the appellant-plaintiff, conceded that there is difference in the ink used in writing the words "Shiv" and "Kumar". Different inks had been used by late-Hari Singh while putting his signatures and writing account number on the cheque. There was over-writing in digit "59" with different ink. Even in the amount written in the words, there was over-writing in the word "fifty", meaning thereby there were number of over-writings even in the cheque, which were not explained by the appellant-plaintiff.

With the aforesaid material on record, in my opinion, no illegality has been committed by both the courts below in dismissing the suit filed by the appellant-plaintiff. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

28.4.2015
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