

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

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RSA 1373 of 2009 (O&M)
Date of decision: 25.02.2016

Paltu Ram

..... Appellant

Versus

Virender Leasing (Pvt.) Ltd. Co and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Jarnail Singh Saneta, Advocate
for the appellant

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 04.03.2008 passed by the Additional District Judge, Panipat, accepting the appeals separately filed by the respondents against the judgment and decree dated 30.01.2006 passed by the learned trial Court whereby the suit filed by the appellant was partly decreed with a direction to the defendants/respondents to render true and correct accounts of loan case in respect of Auto Rickshaw bearing No. HR-45-3361 purchased by the appellant after availing financial assistance from respondent No. 1 through its agent respondent No. 2 within a period of three months. Accordingly, a preliminary decree was ordered to be drawn.

Counsel for the appellant has submitted that the first appellate

Court without any legal and valid reason has set aside the judgment and decree passed by the trial Court, therefore, the findings recorded by the appellate Court cannot be allowed to sustain and liable to be set aside. It is further submitted that the appellant is a poor person, therefore, he could not maintain the relevant record in regard to availing financial assistance from respondent No. 1 through respondent No. 2 and the respondents cannot be allowed to take advantage of illiteracy and poverty of the appellant. It is prayed that the judgment and decree passed by the first appellate Court may be set aside and that of the trial Court be restored.

There is no representation on behalf of the respondents though earlier respondent No. 2 was being represented by an advocate.

I have heard Counsel for the appellant and perused the records.

The first appellate Court, in view of discussion and reasoning given in paras 13 to 16 of the judgment eventually came to hold that the appellant is not entitled to relief of permanent injunction and the suit filed by him is not maintainable in law. A relevant extract from paras 13 and 14 of the judgment passed by the appellate Court reads, thus:-

“13. Plaintiff claims to have obtained financial assistance from defendant No. 1 through defendant No. 2. However, plaintiff fails to mention the exact amount of said financial assistance in plaint. This was the most vital information required to be furnished by plaintiff. No explanation is given by plaintiff for not disclosing the amount of financial assistance received by him. Suit of plaintiff is liable to be dismissed on this single ground alone.

14. Further, plaintiff claims that he entered into a contract with defendants for purchase of a Auto Rickshaw. Defendants strongly denied it in pleadings.

That being so, the onus was upon plaintiff to prove the execution of said contract. However, the plaintiff fails to produce any copy of the alleged contract between the parties. When the basic fact of execution of contract between parties is not proved on record, suit of plaintiff is liable to fail.”

Counsel for the appellant is not in a position to counter the observations made in the aforesaid paras. As the appellant failed to prove any privity of contract between the parties, no error much less illegality can be found in the judgment passed by the appellate Court, holding against the appellant that he is neither entitled to relief of permanent injunction nor his suit is otherwise maintainable by placing reliance upon the judgment of Hon'ble the Supreme Court ***K C Skaria v. Govt. of State of Kerala and another 2006 (1) RCR (Civil) 460.*** In this view of the matter, neither any error much less perversity can be found in the judgment passed by the Court in appeal when otherwise, no substantial question of law arises for adjudication.

As a result, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

25.02.2016
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