

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1240 of 2010 (O&M)
Date of Decision : 20.12.2016

Harmohan Singh Grewal

....Appellant

Versus

Manjit Singh Sandhu

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Satbir Singh, Advocate
for the appellant.

Mr. Jatinder Khokar, Advocate
for the respondent.

Surinder Gupta, J.

This is appeal filed by plaintiff-appellant against concurrent judgments and decree of Courts below dismissing his suit seeking recovery of ₹2,45,000/- as principal and ₹88,200/- as interest.

2. Case of plaintiff, in brief, is that he entered into agreement dated 24.05.1995 to purchase plot no. D-28, Phase-I, Industrial Area, Mohali with Devinder Singh son of Kartar Singh and Inder Singh son of Pishaura Singh and paid ₹5 lacs as earnest money. Later on sellers agreed to sell the said plot to defendant-Manjit Singh Sandhu, who agreed to pay ₹2,45,000/- as premium to plaintiff. The defendant issued a cheque of ₹2,14,500/- dated 03.01.1997 in favour of plaintiff but later on stopped payment of cheque. He admitted his liability to pay a sum of ₹2,45,000/- to plaintiff in his written statement dated 29.02.2010 (filed in another suit). Plaintiff requested the defendant to pay ₹2,45,000/- but he resisted claim of plaintiff with plea that he had issued a cheque of ₹2,30,000/- in favour of plaintiff and paid an amount of ₹15,000/- in cash while in fact the cheque of

₹2,30,000/- was got encashed by the defendant himself and payment of ₹15,000/- was never made to him.

3. The suit of plaintiff was held as barred by limitation as the same had not been filed within a period of three years from 09.01.1997, when cause of action to file the suit arose to plaintiff. The findings recorded by the trial Court on this issue are reproduced as follows:-

“22.Plaintiff has alleged that a cheque was issued by defendant dated 03.01.1997 in discharge of his liability. However, defendant later on stopped the payment and himself encashed the amount of cheque of ₹2,30,000/- on 09.01.2007. Firstly, cause of action has been alleged from this day and secondly the cause of action has been alleged from 29.02.2000 when the defendant Manjit Singh filed written statement in previous suit brought by Harmohan Singh in civil suit bearing no. 418 dated 25.10.1997 proved on record as Ex. D-2 by alleging that defendant admitted his liability in that written statement. Undisputedly the present suit has been brought on 30.10.2001. Computing the period of three years from 09.01.1997, the suit of the plaintiff is clearly time barred.

23. Now, it is to be determined whether defendant Manjit Singh admitted the liability in earlier written statement proved on record as Ex. D-2 or not. A perusal of Ex. D-2 written statement dated 29.02.2000 reveals the fact that the defendant has got nowhere admitted the

liability to make the payment of ₹2,45,000/- rather has alleged that on receipt of the affidavit that defendant paid ₹15,000/- in cash to the plaintiff and paid ₹2,30,000/- in a form of an account payee cheque bearing no. 854259 dated 09.01.1997. Since there was no admission on the part of the defendant so the limitation cannot be taken to run from 29.02.2000 i.e. day of filing of the written statement. Since the cause of action arose to plaintiff on the date of stop payment and from further encashment of cheque in question by defendant on 09.01.1997. So the present suit brought on 30.10.2001 is beyond three years and is time barred.....”

4. On appeal, Ist Appellate Court also affirmed the finding of the trial Court and dismissed the suit being beyond limitation and held that the suit is also barred under Order II Rule 2 CPC.

5. I have heard learned counsel for parties and perused the paper-book with their assistance.

6. Admittedly, the transaction between plaintiff and the defendant pertained to the year 1995. As per plaintiff, the defendant had issued a cheque dated 03.01.1997 to clear his liability. Present suit was filed by plaintiff on 30.10.2001, which is apparently barred by limitation.

7. Learned counsel for the appellant could not refute the conclusion drawn by the Courts below to this effect. His sole argument is that in earlier suit filed by plaintiff in the year 2000, the defendant admitted his liability by filing the written statement, as such, this suit is within

limitation from the date of acknowledgment of outstanding amount. The above point was also argued before the Courts below and concurrent finding of fact has been recorded that there was no admission of claim of plaintiff in earlier suit. It is nowhere the case of the appellant that finding of fact recorded by the Courts below is not based on evidence on file, as such, I find no reason to interfere with the same in this second appeal.

8. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

December 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No