

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

**R.S.A No.4431 of 2016(O&M)
Date of decision : 09.05.2016**

Vipin Kumar Aggarwal

..... Appellant

Versus

Dr. R.P.Raghav and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Divya Sarup, Advocate
for the appellant.

None for respondent no.1.

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

DARSHAN SINGH,J

The present appeal has been preferred by appellant-plaintiff against the judgment and decree dated 16.12.2009 passed by learned Additional District Judge (Fast Track Court), Hisar, vide which the appeal filed by him against the judgment and decree dated 01.10.2007 passed by the learned Civil Judge (Junior Division), Hisar, has been dismissed.

- 2. For the sake of convenience, the status of the parties is being**

mentioned as in the original suit.

3. The appellant-plaintiff has filed the suit for recovery of Rs. 1,28,775/- along with future interest @ 15 % per annum from the date of filing the suit till realization.

4. As per averments in the plaint, the plaintiff-appellant was unemployed and was in search of some kind of job/business. He came into contact with respondent-defendant no.1, who was dealing in manufacturing of cosmetic items under the name and style of Saroj Natural Products. Respondent-defendant no.2 was his Clerk/Assistant. Respondent-defendants assured the plaintiff that there was good market of their products in Haryana and if he deposits Rs. One lac or more with them, they will start the supply of their goods to him for distribution in Haryana. The plaintiff-appellant deposited a sum of Rs. 1,06,000/- with defendant no.1 in installments w.e.f. 11.12.2000 to 21.05.2001. The plaintiff also employed one Ramesh Kumar as a Clerk for his assistance. Plaintiff approached defendant no.1 for supply of his products, but the matter was put off on one or the other reason. Defendant no.1 handed over a piece of paper to the plaintiff written in his own hand that he owed Rs. 1,01,000/- to the plaintiff. He also gave his visiting card. After the final settlement, he promised to return the amount deposited by the plaintiff to him along with interest @ 15 % per annum. Hence, the suit.

5. Respondent-defendant no.1 contested the suit on the grounds *inter alia* that no assurance was given by him to the plaintiff to invest his money in his products. He denied having received the payment of Rs. 1,06,000/-. All other pleas raised in the plaint were repelled and dismissal

of the suit was prayed.

6. Appellant-plaintiff filed the replication to the written statement of defendant no.1. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 25.05.2005:-

1. Whether the plaintiff is entitled for recovery of Rs. 1,28,775/- along with costs and interest at the rate of 15 % per annum from 01.07.2003 till its realization?OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff with costs, vide impugned judgment and decree dated 01.10.2007.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal, which was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 16.12.2009. Hence this Regular Second Appeal by the appellant-plaintiff.

9. I have heard Mr. Divya Sarup, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the appellant has invested Rs. 1,06,000/- by way of installments with defendant no.1. The stand taken by defendant no.1 of total denial stands falsified from the documents Ex.D-1 and D-2. Ex.D-1

is the statement of account. If there was no dealing between the plaintiff-appellant and respondent-defendant no.1, then there was no purpose of preparing the statement of account Ex.D-1. Thus, he contended that from the oral as well as documentary evidence adduced by the appellant-plaintiff, it is established that the appellant had invested a sum of Rs. 1,06,000/- with defendant no.1. Defendant no.1 has neither supplied the products nor returned the money. Thus, the learned Courts below have erroneously dismissed the suit.

11. I have duly considered the aforesaid contentions.

12. It is settled principle of law that the plaintiff has to stand on its own legs in order to claim the relief and he cannot seek decree merely on the basis of weakness in the case of the defendant. To support this view, reference can be made to case **Punjab Urban Planning and Development Authority Vs. M/s Shiv Sarswati Iron Steel Rolling Mills, 1998 (2) R.C.R (Civil) 292.**

13. As per Section 101 of the Indian Evidence Act, 1872 (for short Act), the burden of proof is on the person who desires any Court to give judgment as to any legal right or liability dependent on the existence of the facts which he asserts and must prove those facts exists. To support this view, reference can be made to case **U.P. State Electricity Board and Anr. Vs. Aziz Ahmad 2009 (2) SCC 606.** Similarly, as per Section 102 of the Act, the burden of proof in a suit lies on that person who would fail if no evidence at all was given on either side.

14. In the instant case, appellant-plaintiff has alleged that he came into contact with defendant no.1, who was dealing in manufacturing

of cosmetic items. The defendants assured him that there is good market of their products in Haryana and he should deposit a sum of Rs. One lac or above with them and they would start the supply of their goods to the plaintiff for distribution in Haryana. It is further alleged by the appellant-plaintiff that he had deposited a sum of Rs. 1,06,000/- with defendant no.1 w.e.f. 11.12.2000 to 21.05.2001 in installments. So, it was incumbent upon the appellant-plaintiff to establish that there was any agreement/arrangement between him and defendant no.1 for deposit of money and supply of the products. The burden of proof to establish that he has deposited a sum of Rs. 1,06,000/- with the respondent-defendant no.1 was also upon the appellant.

15. Admittedly, there was no written agreement between the parties for deposit of money and supply of the products. The entire case of the plaintiff-appellant is based on the oral evidence. The learned trial Court has rightly mentioned that PW-3 Ram Mehar Singh was the salesmen of the Ramesh General Store at the relevant time and his testimony was liable to be ignored. It does not appeal to the reasons that the appellant-plaintiff would have invested a sum of Rs. 1,06,000/- with defendant no.1 without obtaining even a receipt thereof, more so, he being the son of a practicing Advocate at Hisar. It is also the case of the appellant-plaintiff that defendant-respondent did not supply him any product. Again, it is not believable that in-spite of that he would carry on depositing the amount with defendant no.1 by way of installments without obtaining any products/goods from defendant no.1.

16. The visiting card Ex.D-2 does not confer any liability upon

the defendants nor it could establish any business transactions between the parties. The writing Ex.D-1 relied upon by the appellant-plaintiff can also not establish his case. As per the observations of the Courts below, the said writing shows that amount of Rs. 1,06,000/- has been paid to defendant no.2. But, the plaintiff has not led any evidence to show that defendant no.2 was working as a Clerk/Assistant with defendant no.1 Dr. R.P.Raghav and had received the said amount on behalf of defendant no.1 to make him vicariously liable. Only a sum of Rs.10,000/- has shown to be paid to defendant no.1. The learned trial Court has categorically mentioned that by virtue of writing Ex.D-1, the accounts have been settled between plaintiff and defendant no.1 and nothing was to be paid by defendant no.1 to the plaintiff. So, the writing Ex.D-1 also cannot confer any liability upon respondent-defendant no.1.

17. Consequently, the appellant-plaintiff has not been able to establish any agreement/arrangement between him and defendant no.1 for deposit of the amount and supply of the products. Appellant-plaintiff has also fail to establish that he had deposited a sum of Rs. 1,06,000/- with respondent-defendant no.1. He has also not been able to establish any relationship of master and servant/principal and agent between the defendants. So, he is not entitled to recover any amount from the defendants.

18. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

19. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

20. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 09, 2016
s.khan

(DARSHAN SINGH)
JUDGE