

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

RSA No.4510 of 2011 (O&M)

Date of decision : 08.04.2016

Jeet Ram

...Appellant

Versus

Shiv Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. H.S. Sidhu, Advocate for
Mr. J.S. Mehndiratta, Advocate for the appellant.

Mr. Rakesh Bakshi, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.2 is aggrieved of the judgment and decree rendered by the lower Appellate Court dated 13.10.2011, whereby in suit for mandatory injunction, direction has been issued to the bank to pay the amount of FDR bearing TP01/129230 and LF No.295/13 dated 06.07.1997 along with interest up to date in favour of appellant within a period of one month failing which the legal consequences would follow.

Mr. H.S. Sidhu, learned counsel appearing on behalf of appellant submits that trial Court dismissed the suit on the ground that

plaintiff himself submitted a request Ex.D1 for premature release of FDR in the name of the defendant. With regard to fraud, nothing has been brought on record by plaintiff for rebutting the same, therefore, ingredients of Order 6 Rule 4 has not been complied with. All these factors had been noticed by the trial Court while dismissing the suit and thus there is illegality and perversity in the impugned judgment and decree of lower appellate Court and urges this Court to formulate following substantial questions of law:-

1. Whether in the absence of the proof of the fraud, much less, ingredients as enshrined under Order 6 Rule 4, the suit could have been decreed?
2. Whether there is illegality and perversity in the judgment rendered by the lower Appellate Court?

Mr. Rakesh Bakshi, learned counsel appearing on behalf of respondent No.1-plaintiff submits that there is no illegality and perversity in the judgment rendered by the lower appellate Court. Though contents of the letter Ex.D1 have been denied but the signature has been proved. Even otherwise bank had no privity of contract with the appellant-defendant No.2, therefore amount could not have been encashed, much less, no cause of action arose in favour of appellant-defendant No.2 thus urges this Court to affirm the findings rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that respondent No.1 has failed to prove the ingredients of Order 6 Rule 4. Once he admitted signature on Ex.D1 qua issuance of direction to bank to encash FDR in favour of defendant No.2, no independent or corroborative evidence has been led to the contrary, much

less, that under what circumstances, the contents of the letter were filled and submitted to the bank. No FIR or police complaint had been made to the police. Person who approaches the Court has to discharge the onus vis-a-vis fraud and misrepresentation. Even otherwise, suit for mandatory injunction ex facie was not maintainable, remedy was to seek recovery by affixation of court fee.

In view of aforementioned facts, I intend to differ with the findings rendered by the lower Appellate Court as it suffers from illegality and perversity. Substantial questions of law as noticed above are answered in favour of appellant-defendant No.2 and against respondent No.1-plaintiff.

Judgment and decree of the lower Appellate Court is set aside.

Suit is ordered to be dismissed.

Appeal stands allowed.

08.04.2016

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**(AMIT RAWAL)
JUDGE**