222

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 30.08.2016

1. **RSA-1098-2013 (O&M)**

M/s Dhillon Traders
... Appellant

Versus

Shital Singh
... Respondent

2. **RSA-1115-2013 (O&M)**

M/s Dhillon Traders
... Appellant

Versus

Nasib Kaur
... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Longia, Advocate
for the appellant in both the appeals.

Mr. H.S. Minhas, Advocate
for the respondent in both the appeals.

****

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

AMIT RAWAL, J. (ORAL)

CM-2935-C-2013 IN RSA-1098-2013 AND
CM-2965-C-2013 IN RSA-1115-2013

For the reasons stated in the applications, which are duly supported the affidavit, the delay of 20 days' delay in re-filing the appeal is condoned.

CMs stand disposed of.

MAIN CASES

This order of mine shall dispose of two appeals bearing ***RSA No.1098 of 2013*** titled as ***“M/s Dhillon Traders V/s Shital Singh”*** and ***RSA No.1115 of 2013*** titled as ***“M/s Dhillon Traders V/s Nasib Kaur”*** filed at the instance of the appellant-defendant, who has lost in both the Court below in a suit seeking recovery for specific amount.

Mr. M.S. Longia, learned counsel appearing on behalf of the appellant-defendant submits that both the Courts below have committed illegality and perversity in decreeing the suit, in essence, the respondent-plaintiff has failed to prove the disbursement of the alleged loan amount, much less, receipts dated 01.12.2004 in ***RSA No.1098 of 2013*** and dated 01.02.2005 in ***RSA No.1115 of 2013***, except one witness Dara Singh. No other attenuating circumstances or corroborative evidence has been led to prove the said receipts. The scribe of the receipt has not been examined, thus, the presumption under Section 118 of the Negotiable Instrumental Act, 1881, cannot be drawn in favour of the respondent-plaintiff. The receipt was also not stamped and it was not advancement of loan as it did not contain the element of interest. It is a basically fraudulent document. The respondent-plaintiff failed to discharge the onus, thus, the suit was liable to be dismissed. Both the Courts below ought to have examined the aforementioned aspects and urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. H.S. Minhas, learned counsel appearing on behalf of the respondent-plaintiff submits that a specific question in the cross-examination of the plaintiff, it was asked that who was the signatory of the receipts and the answer was Jassa Singh. The summon was also ordered to be served upon him. Despite service, he did not appear and therefore, adverse inference was also liable to be drawn. In fact, the appellant-defendant has proved the case of the respondent-plaintiff by putting a question in cross-examination, therefore, he did not think it proper to lead evidence in rebuttal. The receipt was not stamped, the Court below could have ordered for 10 times of the stamps duty, thus, urges this Court for affirming the findings under challenge.

Mr. M.S. Longia, in rebuttal, submits that, it is not a commercial transaction, therefore, interest @ 12% is too phenomenal and it should be reduced to 6%.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. M.S. Longia, for, though the respondent-plaintiff did not state in the examination-in-chief regarding the scribe of the receipt, but the appellant-defendant rather proved the case of the respondent-plaintiff by asking certain question in the cross-examination and answer was in the following form:-

> *"I paid the disputed on 1.12.2004. Defendant issued the receipt. The receipt was written by his Munim/Clerk and was signed by the defendant. I paid a sum of ₹ 4,62,895/- The said amount was lying at my residence. I have not withdrawn the money to the bank. I sold one vehicle and popular trees. I do not know the number of the vehicle which I sold during that period. I sold the said vehicle to one person resident of Nanakpur but I do not know his name. I do not know the date when the vehicle was sold. I executed an affidavit in favour of*

> *person to whom the vehicle was sold. I do not know whether the affidavit was attested by the notory or executive magistrate. But the vehicle was sold by my son-in-law. The receipt was written in Punjabi. The name of the munim/clerk was Jassa. His real name was Jassa. I do not know the name of father of Jassa. I do not know the residence of Jassa. Jassa might haver signed the receipt. I do not know the contents of the receipt as I am illiterate."*

The aforementioned piece of evidence itself shows that the receipt was signed by the Jassa Singh. I have seen the record of the Courts below and I find that service upon Jassa Singh, who alleged to have been a Munim/Clerk, was effected, but he did not appear. This fact has escaped in the notice of both the Courts below, though, adverse inference was also liable to be drawn. It is the additional feature for decretal of the suit. Even a question with regard to the payment of the loan amount was put and the answer was also in positive. Dara Singh had been very coherent and consistent in the cross-examination. All these factors prove that money was advanced. The Court cannot remain oblivious to the fact that the appellant-defendant is none-else, but a commission agent, whereas on the other side, the respondent-plaintiff is old person, who had extended the loan owing to the good relation with the appellant-defendant.

As regards the findings qua interest factor, since, it was not a commercial transaction, I reduce the interest rate from 12% to 9%.

For the foregoing reasons, findings qua interest factor are hereby modified and rest of the findings are affirmed.

In the appeal bearing RSA No.1098 of 2013, there is an application under Section 149 CPC for granting five months' time to pay the requisite Court fee i.e. ₹ 14,923/-, but till date no Court fee has been affixed, this order of mine shall come into force only after making the deficiency of the Court fee good.

With the aforesaid modification, the appeals stand disposed of.

(AMIT RAWAL)
JUDGE

30.08.2016
yogesh

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**