

In the High Court of Punjab and Haryana at Chandigarh

RSA No.2623 of 2013 (O&M)

Date of Decision: 27.1.2016

Balwinder Singh

---Appellant

versus

Balraj

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ramesh Sharma, Advocate
for the appellant**

**Mr. Avtar Singh Khinda, Advocate
for the respondent**

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 2.3.2012 passed by the District Judge, Kapurthala whereby the appeal filed by the respondent against the judgment and decree dated 13.12.2010 passed by the Additional Civil Judge (Senior Division), Kapurthala dismissing his suit has been allowed and the judgment and decree passed by the trial court has been set aside and as a consequence, the suit of the respondent for recovery has been decreed.

The facts relevant for disposal of the present appeal are that the respondent filed a suit for recovery of Rs. 40,000/- towards principal

amount and Rs. 14,400/- in respect of interest with a prayer for grant of future interest on the basis of pronote and receipt dated 25.6.2004. It is averred that the appellant borrowed a sum of Rs. 40,000/- for family requirements and executed the pronote and receipt dated 25.6.2004 in lieu thereof. He failed to pay the amount despite demand.

The appellant/defendant filed the written statement by raising preliminary objections inter alia that the suit is not maintainable; the respondent has got no locus standi or cause of action to file the suit; he is estopped by his act and conduct from filing the suit and the suit being barred by time. On merits, it is pleaded that the appellant is a simpleton rustic villager and he approached the respondent for a loan of Rs. 15,000/-. The respondent obtained his signatures on blank documents to create security. The appellant had returned the loan amount with interest in the presence of Kewal Singh son of Sh. Narain Singh and Lakhbir Singh son of Sh. Chanan Singh but the respondent did not return the blank signed documents and manipulated the same into pronote and receipt to file the present suit.

The respondent filed the replication controverting the allegations raised in the written statement while reiterating his stand taken in the plaint.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. Whether the defendant borrowed a sum of Rs. 40,000/- from the plaintiff as a loan by way of pronote and receipt, in his favour? OPP

2. Whether the defendant took a loan amount from plaintiff at the rate of 12% per annum and whether plaintiff is entitled to this amount?OPP
3. Whether the suit as framed is not maintainable? OPD
4. Whether the plaintiff has no locus-standi or cause of action to file the present suit?OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit?OPD
6. Whether the plaintiff has not come to the court with clean hands?OPD
7. Whether the suit is time barred?OPD
8. Relief.

The trial court permitted the parties to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, determined issues No. 1 to 6 in favour of the respondent but the suit was dismissed in view of its findings on issue No. 7 that the suit filed on 16.7.2007 is beyond the period of limitation, therefore, time barred as the period of limitation on the basis of promissory note is three years i.e. upto 25.6.2007.

The respondent preferred an appeal to express his grievance in regard to findings on issue No. 7 and the same came to be decided by the District Judge, Kapurthala in favour of the respondent-plaintiff by holding that the suit filed on 16.7.2007, on the first opening day of the courts after summer vacations is within limitation.

Feeling dissatisfied with the verdict of the first appellate court,

the present appeal has been preferred by the defendant/appellant.

The sole submission made by counsel for the appellant is that as the respondent instituted the suit on 23.7.2007 and not on 16.7.2007, the same is clearly barred by limitation. It is further argued that the court in appeal committed a grave error by holding that the suit was instituted on 16.7.2007, the first opening day after summer vacations.

Counsel for the respondent while refuting contentions of counsel for the appellant has submitted that the trial court and the court in appeal have consistently held that the suit was filed on 16.7.2007 i.e. the opening day after summer vacations.

I have heard counsel for the parties and perused the records.

Counsel for the appellant has not raised an issue that if the suit was instituted on 16.7.2007, the same would still be barred by limitation as period of three years from the date of loan expired on 24.6.2007. There is no dispute between the parties that the civil courts were closed from 16.6.2007 to 15.7.2007, therefore, the said period is to be excluded for computing limitation in view of the provisions of the Limitation Act, 1963. Hence, the only question which requires consideration is, whether the suit was instituted by the respondent on 16.7.2007 or 23.7.2007.

A perusal of the records leaves no manner of doubt that the plaint was presented in the court on 16.7.2007 as per the endorsement made by the Civil Judge (Senior Division), Kapurthala dated 16.7.2007 and the same was entrusted by the Civil Judge (Senior Division) to its own court. The mere fact that the case was taken up for the first time on 23.7.2007 would not enure to benefit of the appellant to contend that the suit was

instituted on 23.7.2007 and not on 16.7.2007. As the suit was instituted on 16.7.2007, in view of the discussion made hereinabove, there is no merit in the contention of the appellant that the suit filed by the respondent is barred by limitation as has been held by the learned trial court.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the judgment impugned. As a consequence, the appeal is hereby dismissed with costs.

(Rekha Mittal)
Judge

27.1.2016

PARAMJIT