

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 7.1.2016

R.S.A.No. 4152 of 2013 (O&M)

Mandeep KaurAppellant

Versus

Ajit Singh and anotherRespondents

R.S.A.No. 4153 of 2013 (O&M)

Mandeep KaurAppellant

Versus

Bhalwinder Singh and anotherRespondents

R.S.A.No. 4154 of 2013 (O&M)

Mandeep KaurAppellant

Versus

Jaswant Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.H.S.Batth, Advocate,
for the appellant.

Mr.K.S.Rekhi, Advocate
for respondent No. 1.

- 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?**

Raj Mohan Singh, J.

1. Vide this common judgment, abovesaid three regular

second appeals are being disposed of. Since all the appeals are arising out of common issue of agreement dated 24.3.2008, therefore, facts are being taken from RSA No.4152 of 2013.

2. Plaintiff Ajit Singh filed a suit for recovery of ₹ 3,50,000/- on the basis of agreement dated 24.3.2008 executed by defendant No.1 in favour of plaintiff and others along with future interest from the date of filing of suit till final realisation of the amount. The amount involved in RSA No.4153 of 2013 is 1,57,000/- and in RSA No.4154 of 2013 is also ₹ 1,57,000/-. The evidence in all the three cases remains more or less the same.

3. Plaintiff filed the suit on the ground that defendant No.1 along with her brother Harpreet Singh and mother Charanjit Kaur had taken an amount of ₹ 3,50,000/- from the plaintiff on the basis of sending his son, namely, Baljinder Singh to Cyprus for studying there and plaintiff made payment of ₹ 1,17,930/- through draft bearing No. 933668 dated 7.2.2008 drawn on Tarn Taran Central Co-operative Bank Ltd. Branch Goindwal Sahib in the name of Thomas Cook India Ltd., Jalandhar and ₹ 2,23,070/- in cash was paid to defendant No.1 along with her brother and mother. Defendant No.1, her brother and mother did not fulfil the promise and on demand of refund of the amount, nothing was done, to which dispute arose and the matter was referred to village panchayat of Goindwal Sahib,

where defendant No.1 admitted about the transaction and liability and an agreement dated 24.3.2008 to that effect was executed vide which defendant No.1 agreed to send the son of the plaintiff to Cyprus and in case of failure to repay the amount of ₹ 3,50,000/- to the plaintiff within stipulated time of 15 days from the date of writing of the said agreement dated 24.3.2008. The agreement was duly written at the instance of defendant No.1, which was signed by the attesting witnesses. Defendant No.2 Charanjit Kaur, mother of defendant No.1, was also present but she did not sign and therefore, she was impleaded as proforma defendant in the suit.

4. Suit has been contested by the defendants on merits. Both the defendants denied that they have received the sum of ₹ 3,50,000/- from the plaintiff, rather submitted that a sum of ₹ 35,000/- was received from Baljinder Singh, son of the plaintiff by defendant No.1 and not from plaintiff Ajit Singh. The said amount was in respect of charges and attestation fee of educational documents. Defendants have admitted that Baljinder Singh wanted to go to Northern Cyprus and they have also admitted that bank draft of ₹ 1,17,930/- was drawn in favour of Thomas Cook India Ltd., Jalandhar for one year tuition fee for European University of Lefke and fee for Horticultural production and marketing B.A. and this draft was directly given by Baljinder Singh to Thomas Cook India Ltd. at their office on

7.2.2008.

5. Defendants further submitted that the amount was to be sent to European University of Lefke Cyprus Science Foundation, Northern Cyprus in their account, which was, in fact, sent to the University by Thomas Cook India Ltd. through Thomas Cook India Ltd. Mumbai. The receipt and confirmation letter have been issued by the University and, therefore, handing over this draft to the defendants was not correct. Defendants also denied the factum of receiving ₹ 2,32,070/- in cash. Defendant No.1 submitted that signatures of Mandeep Kaur were obtained on 24.3.2008 on blank stamp paper, which was not the stamped paper equivalent to the amount meant for executing agreement. Defendant No.1 signed the said paper in good faith as all the papers of Baljinder Singh for sending him to Northern Cyprus were found in order. Defendant No.1 has submitted that the deal was directly done by Baljinder Singh and the plaintiff with one Sodhi, who is running consultancy business for sending people abroad as students for study purpose at Ludhiana and he arranged all the documents of Baljinder Singh for sending him to Northern Cyprus for study purpose. All the original papers were sent to European University of Lefke to Turkish Embassy at New Delhi and Turkish Embassy got a bond filled from Baljinder Singh, his father Ajit Singh and his mother vide which they were bound by the conditions of the University

for payment of fees and for getting Turkish Transit Visa in order to go to Northern Cyprus. On execution of such bond, Baljinder Singh was granted Turkish Transit Visa in order to go to Northern Cyprus. Defendants further submitted that thereafter, acceptance letter was issued by the European University of Lefke on 1.2.2008 as a token of confirmation regarding acceptance of registration fee by the University, which was sent through Mr.Sodhi of Ludhiana. Thereafter, tuition fee through bank draft etc. was sent to the University through Thomas Cook India Ltd. And the entire fee was received by the University as non refundable fee in nature. In case students fails to join the college, the fee is not to be refunded. The valid visa for study was granted to Baljinder Singh and this fact is duly stamped and mentioned in his passport. Plaintiff has concealed the material facts from the Court. A valid ticket from New Delhi to Arcane Airport in Northern Cyprus was also got issued to Baljinder Singh by Mr.Sodhi of Ludhiana and visa was granted on 2.3.2008. The time period granted to Baljinder Singh for report to the University of Northern Cyprus was before 28.3.2008 because the classes of the University were to start on the specific date. The plaintiff went to Indira Gandhi International Airport, New Delhi on 27.3.2008 and the airport authorities refused the boarding of aeroplane because he was too late to report to the European University for studies.

6. Plaintiff and Baljinder Singh also reported the matter to S.S.P. Tarn Taran and detailed inquiry was conducted by the police of Anti Fraud Squad of Tarn Taran, but nothing incriminating could be detected in the transaction. Resultantly, police gave clean chit to the defendants.

7. After filing of replication and framing of issues, both the parties led their respective evidence in support of their case.

8. Plaintiff, while relying upon witnesses Sujinder Singh, Tarmail Singh and Dr.Manjit Singh Malli, sought to prove that defendant No.1 signed the agreement dated 24.3.2008 Ex.PA. Bhalwinder Singh and Jaswant Singh- respondents No.1 in RSA Nos.4153 and 4154 of 2013 are also signatories to the agreement in question. The cause of action for filing the suit in question revolves around the validity of Ex.PA i.e. agreement dated 24.3.2008 executed by defendant No.1, acknowledging the payments due to the plaintiffs. Bhalwinder Singh and Jaswant Singh were having similar dispute, therefore, a common agreement was executed and three different suits were filed hereafter, on the basis of enforceability of the said agreement. The trial Court by referring to the signatures of defendant No.1 on the agreement at one place or at two places, concluded that the signatures of defendant No.1 were taken on blank stamp paper of ₹ 15/- on 24.3.2008 and she signed the said paper in good faith, whereas, her stand was that the deal for sending son

of the plaintiff abroad was directly done by Baljinder Singh and the plaintiff with one Mr.Sodhi, who is running consultation business in Ludhiana in sending students abroad for study purpose. While making reference to the admission, visa, ticket for air trip and visit of Baljinder Singh at Indira Gandhi International Airport on 27.3.2008 and refusal by the authorities to board the plain being too late, the trial Court concluded that the genuineness of the agreement is doubted and the same cannot be relied upon being un-registered document and is not on the required stamps as required under the law. Trial Court believed the payment of ₹ 35,000/- only towards attestation of documentation of Baljinder Singh by defendant No.1 and ultimately dismissed the suit on the basis of enforceability of the agreement dated 24.3.2008.

9. Plaintiff feeling dis-satisfied with the judgment and decree dated 30.4.2012 passed by the trial Court, filed an appeal before the lower Appellate Court. The lower Appellate Court, after discussing all the relevant facts, took cognizance of the statements of DW-1 Mandeep Kaur, which was very necessary in order to sum up the entire controversy, because the trial Court had disbelieved the execution of agreement on the plea that defendant No.1 had signed the agreement in good faith as the documents of Baljinder Singh were found to be in order for sending him abroad. The question arises as to

whether defendant No.1 signed the blank paper in good faith particularly when she is not illiterate and she used to sign papers in English. Mandeep Kaur, while appearing as DW-1, has admitted that she is an educated lady and is not a person, who can be deceived by any simple villager. She has admitted that she is graduate. She used to sign in English. She knew plaintiff Ajit Singh and Bhalwinder Singh being co-villagers. She has also admitted that she did not sign blank paper earlier in the alleged agreement. She has also admitted that before the alleged agreement, plaintiff had moved the complaint before the police and, therefore, relation between them were not cordial or harmonious to infer that she would sign blank papers in good faith. A perusal of the statement of defendant No.1 highlights that she never signed any blank paper and the relations between the parties were not so conducive or harmonious to create good faith amongst them for the purposes of signing blank papers in favour of the plaintiffs. Defendant No.1 has taken a positive stand that she had signed the blank papers on 24.3.2008 because the documents of Baljinder Singh were found to be in order. If the documents of Baljinder Singh were in order then what prompted defendant no.1 to sign the blank papers and what was the necessity of signing such blank papers for any subsequent follow up. Admittedly, before 24.3.2008, the plaintiffs had already moved police complaint against defendant

No.1 and matter was taken up by the panchayat also. Thereafter, agreement Ex.PA came to be in existence in which defendant No.1 acknowledged her liability to pay ₹ 3,50,000/- to the plaintiff, father of Baljinder Singh and the amount was also agreed to be paid to fathers of Gurpreet Singh and Ranjit Singh i.e. defendants No.1 in connected appeals.

10. By way of agreement in question, promise was made to do something or to pay something. It is not a case of any payment of earnest money or delivery of possession after paying the entire sale consideration. A perusal of the agreement simplicitor advances a case of a promise wherein defendant No.1 agreed to pay the amount of ₹ 3,50,000/- to the plaintiff in respect of transaction of sending his son to abroad and in case she fails then she would be bound by such promise for payment of the amount to the plaintiff. PW-2 Tarmail Singh and PW-3 Sujinder Singh were the attesting witnesses of such agreement. Even if Sujinder Singh is not proved to be sarpanch of the village, but he could have attested the documents in the capacity of respectables or attesting witness of the agreement. Statements of the attesting witnesses are sufficient to prove due execution of agreement. Question of entering into transaction by Baljinder Singh directly with Thomas Cook India Ltd. or otherwise has its necessary explanation in view of the fact that defendant No.1 has meticulously stated about the transaction

with Thomas Cook India Ltd. and she has deposed consistently with reference to different stages till the visit of Baljinder Singh to Indira Gandhi International Airport and refusal by the airport authorities to allow him to go abroad. Had she be not closely associated with the transaction, she would not have deposed in such manner with all meticulous details of the transaction. Therefore, signing by defendant No.1 simplicitor on the blank pages cannot be taken to be an act in good faith, rather she is proved to be fully involved in the transaction.

11. The findings recorded by the lower Appellate Court appeared to be lawful. So far as the transaction prior to agreement is concerend, the same has been incorporated in the agreement dated 24.3.2008 itself which has been duly signed by defendant No.1 Mandeep kaur. Signatures on the said agreement are also admitted by the defendants/ respondents. However, defendants have taken plea of signing blank stamp papers. Defendant No.1 has not been able to give any satisfactory and convincing reason as to why she signed the blank paper in favour of the plaintiff and two other persons from whom she had taken an amount and by that time relations between the parties were not harmonious in view of filing of police complaint. Therefore, singing of blank papers by defendant No.1 is not proved in good faith and the story projected by defendant No.1 appears to be on wrong footing.

Admittedly, defendant No.1 had signed the blank papers and date written under the signatures has also been admitted. She has not been able to give any cogent reason for signing blank papers and it cannot be presumed that an educated lady, who is working as a travel agent, would sign the blank papers in favour of a person with whom she had strained relations.

12. In view of aforesaid, lower Appellate Court has rightly observed that the respondents have admitted that original papers of Baljinder Singh were sent to Turkish Embassy and visa of Northern Cyprus was not taken by her for sending Baljinder Singh to said country. Therefore, the filing of suit on the basis of agreement, which is duly proved on record, is liable to be decreed. Defendants/ respondents have not been able to refute the allegations made by the plaintiff. Resultantly, the view taken by lower Appellate Court is lawful in decreeing the suit. Since the perusal of the agreement does not show any terms and conditions regarding interest as claimed by the plaintiff in his plaint, therefore, defendant No.1 is held liable only to pay an amount of ₹ 3,50,000/- in the present appeal arising out of suit filed by the plaintiff and to the extent of amount pleaded in the suit filed by Bhalwinder Singh and Jaswant Singh.

13. The questions as formulated by the appellant are not the questions of law much less substantial questions of law and simply do not arise. Question No.1 is only a question of fact. As

regards question No.2, there is no error committed by the lower Appellate Court in accepting the appeal on the basis of correct appreciation of statement of defendant No.1. Therefore, the appreciation made by lower Appellate Court is not subject matter of re-appreciation at the hands of this Court in regular second appeal. As regards question No.3, it has to be pointed out that the agreement of present nature is only a promise to pay the amount. It is not an agreement in respect of any sale transaction wherein possession is proved to have been delivered coupled with payment of full consideration. It is simplicitor an agreement acknowledging an obligation to pay the amount in case the assignment is not completed. Question No.3 is elaborately discussed in preceding paras of the judgment. Question No.4 does not arise inasmuch as that this question is not a question of law by any stretch of imagination. Questions No.5 and 6 simply do not arise as there is no concealment of facts, rather signature of defendant No.1 appeared on agreement is an admitted position and the alleged signing of document in good faith cannot be presumed from an educated lady on the date of agreement particularly when parties were having strained relations on account of filing of police complaint to the police on earlier occasion. Question No.6 cannot be entertained inasmuch as that there cannot be any appreciation of evidence in second appeal. Lower Appellate

Court has appreciated the facts in their correct perspective and no other interpretation/ appreciation of facts is possible. The findings recorded by the lower Appellate Court are perfectly legal and no interference is called for at the hands of this Court in regular second appeal.

14. Consequently, these appeals are dismissed.

(RAJ MOHAN SINGH)
JUDGE

January 07, 2016
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