

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

RSA No.2065 of 2016 (O&M)

Date of decision : 28.04.2016

Tarsem Chand

...Appellant

Versus

Vinod Garg and others

...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: Ms. Puja Chopra, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for recovery of ₹9,00,000/- as principle and ₹90,000/- as interest has ordered to be decreed with future interest at the rate of 6% p.a. till its realization.

Ms. Puja Chopra, learned counsel appearing on behalf of appellant submits that suit was ex facie not maintainable as it was hit by provision of Order 2 Rule 2 of Code of Civil Procedure. In previous suit (Annexure A-1 here) and Ex.D1 there is categoric pleadings in paragraph 10 and para 24 of the cause of action with regard to payment of cheque and amount. In the aforementioned suit, relief sought was with regard to the

declaration that the documents i.e. two applications addressed to the Estate Office, UT Chandigarh, three affidavits allegedly executed by the respondent-plaintiff jointly, cancellation of the agreement to sell dated 08.08.2005, request for withdrawal of consent for no objection certificate and agreement dated 09.05.2006 taken by the defendant Nos.1 to 3 by misrepresentation, cheating and fraud, be declared illegal, null and void, whereas instant suit is for recovery of the amount sought on account of dishonouring of the cheque dated 16.03.2006 issued on 16.03.2006. The earlier suit was filed on 17.07.2006 which was dismissed in default in 2013, whereas present suit for recovery has been filed on 10.02.2007. The respondent-plaintiff had cause of action to claim the recovery and once having omitted, deemed to have been relinquished the same, therefore, provision of aforementioned of Code of Civil Procedure are principally attracted. The trial court on the basis of the aforementioned evidence and provisions of law and on examination of the settled law and facts, dismissed the suit, but the lower Appellate Court, has committed illegality and perversity in decreeing the suit, whereas judgment relied upon by the lower Appellate Court helps the appellant-defendant in seeking indulgence of this Court, for, in Alka Gupta's case, the respondent-plaintiff had two different cause of action whereas on co-joint reading of the earlier suit and the present suit, it is apparently clear that respondent-plaintiff had a occasion to seek the recovery of the amount at the time when the earlier suit was instituted and thus urges this Court to formulate substantial question of law as culled out in memorandum of appeal. In support of his contention, she has relied upon judgment rendered by Hon'ble Supreme Court in *State Bank*

of India Vs. Gracure Pharmaceuticals Ltd., 2014(1) RCR (Civil) 889. I have gone through the judgment. The facts of the judgment reveals that plaintiff therein had instituted the suit for recovery against the bank and had also realised the amount and subsequently filed suit for damages. It is in these circumstances, the Court invoked the provision of Order 2 Rule 2, that there was occasion to claim the damages by co-joining the relief of damages in suit for recovery.

I have heard learned counsel for the appellant and appraised the paper book and as well as provision of Order 2 Rule 2 and of the view that there is no merit and force in the submission of Ms. Chopra. It would be apt to reproduce the prayer sought in the previous instituted suit, which reads thus:-

“It is, therefore, respectfully prayed that the suit of the plaintiff may kindly be decreed with costs against the defendant for the following reliefs:-

- a) Declaration to the effect that documents i.e. two applications addressed to Estate Officer, UT, Chandigarh, three affidavit executed by the plaintiffs individually and jointly, cancelling the agreement to sell dated 8.8.2005 and making request for withdrawal for withdrawal of consent for no objection certificate and agreement dated 9.5.2006 were taken by defendant Nos.1 to 3 by misrepresentation by cheating, misrepresentation & fraud and hence the said documents are illegal, null and void documents and the same cannot be used for any intent and purpose.*
- b) For permanent injunction restraining defendant No.4 and 5 from transferring the ownership rights of 40% share in House No.2 and 4, Sector 35C, Chandigarh, in*

favour of defendant Nos.1 to 3 or issuing No Objection Certificate in favour of any person except the plaintiff.

- c) For permanent injunction restraining defendant Nos.1 to 3 from selling alienating or transferring in any manner, 40% ownership rights of house No.2304, Sector 35-C, Chandigarh in favour of any person except the plaintiff and further restraining them from interfering in peaceful possession of the plaintiffs over the upper portion of House No.2304, Sector-35C, Chandigarh except in due course of law.*
- d) For mandatory injunction directing the defendant No.4 and 5 from issuing no objection certificate in favour of plaintiffs in respect 40% share belonging to Smt. Nirmala Devi in House No.2304, Sector-35C, Chandigarh.*
- e) Any other relief, which this Hon'ble Court may deem fit in the facts and circumstances of the case.”*

On perusal of the aforementioned prayer, respondent-plaintiff had sought declaration with regard to documents mentioned therein and as well as injunction by transferring rights of 40% shares in house No.2304, Sector 35C, Chandigarh. It is a matter of record that proceeding under Section 138 of Negotiable Instruments Act instituted by the respondent resulted into conviction, wherein appeal is stated to be pending. Be that as it may but the fact remains that cheque, aforementioned, has been issued by the appellant but same was dishonoured. In my view, there were different cause of action in favour of respondent-plaintiff because at that stage he was worried about the threat extended by the appellant-defendant with regard to getting the property transferred in other manner than the agreed as per agreement dated 09.05.2006 but seven months thereafter instituted suit

for recovery realizing that he may not succeed in suit for declaration and permanent injunction. Suit resultantly was dismissed in default. As per the terms and conditions, the appellant had agreed to pay the amount of cheque issued in lieu thereof, has been dishonoured. Remedy was actually to seek recovery, rightly so, suit was filed. Respondent-plaintiff cannot said to have been relinquished/omitted to claim the relief of the amount, therefore, provision of Order 2 Rule 2 cannot be attracted. As noticed above, the relief sought in the earlier suit and in the present suit is totally distinct as exercise demanded is to seek the vindication of grievance at the relevant point of time, thus, strictly speaking the provision of Order 2 Rule 2 cannot pressed into service.

The findings rendered by the lower Appellate Court is perfect, legal and justified and being the last court of facts and law has appreciated the law and fact.

I am in agreement with the findings rendered by the lower Appellate Court and do not suffers from illegality and perversity, much less, no substantial question of law arises for determination.

Appeal stands dismissed.

28.04.2016

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**(AMIT RAWAL)
JUDGE**