

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

RSA No.2790 of 2016 (O&M)

Date of Decision.08.07.2016

Dinesh Batra son of Sh. Ram Kishan Lal Batra

.....Appellant

Vs.

Chander Shekhar Tomar

.....Respondent

Present: Mr. Kunal Vinayak, Advocate
for the appellant.

Mr. Kuldip Singh Chaudhary, Advocate
for the caveator-respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the judgments and decrees rendered by both the courts below whereby the suit for recovery of ₹4,50,000/- along with interest @9% has been decreed.

Mr. Kunal Vinayak, learned counsel for the appellant submits that the allegation in the plaint was that the cheques referred to in the plaint and as well as in the evidence pertain to extension of loan whereas no loan was taken. Even the appellant had funded the foreign trips of the respondent-plaintiff and made him a partner in the partnership firm and the said facts were sought to be brought on record by way of application for additional evidence. Though the application for additional evidence has been allowed but the documents have not been referred to and substantial question of law arises for consideration as the lower Appellate Court being

the last court of facts and law has not taken into consideration the documents referred to by the appellant-defendant.

Mr. Kuldip Singh Chaudhary, learned counsel appearing on behalf of the caveator-respondent submits that plea of alleged partnership and funding of foreign trips is not substantiated with any documentary evidence. The contention that the evidence brought on record by way of conveyance deed and other documents has no relevancy with the loan transaction as the partnership is of the year 2013 whereas the cheques are of the year 2011.

The counsel for the appellant also relies on a judgment of the Supreme Court in Malayalam Plantations Ltd. Vs. State of Kerala and another 2010 (13) SCC 487 to contend that it is incumbent upon the Appellate Court to consider the application for reception of additional evidence on merits.

This judgment is not applicable to the facts of the present case as no explanation has come forth as to how relevant documents which are sought to be placed by way of additional evidence are necessary for adjudication of the case. Even otherwise no relevancy, much less, explanation has come forth that the documents are relevant, for, the cheques through which the loan amount was taken are of the year 2011 whereas the plaintiff has purported to have been made partner to the extent of 20% in the year 2013. Both are independent transactions. The appellant has failed to prove the payment of the aforementioned cheques, much less, any other transaction to show that the payment was made in lieu of some goods both moveable or immoveable or any other property said to be in his hands. In the absence of the same, the Court below had no other option but to decide

the suit on the preponderance of the evidence available before it. Moreover, the application for additional evidence has been allowed by the lower Appellate Court and the same has been noticed by the Court. The application for additional evidence was moved just to delay the execution of the judgment and decree as the additional evidence has no relevance with the alleged transaction vide which the appellant is stated to have received the cheques which have been concededly encashed.

In the wake of above observations, there is no ground made for making intervention in the judgments and decree passed by the Courts below, much less, no substantial question of law arises for consideration in the second appeal. The regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 08, 2016
Pankaj*