

**C.M. NOS.1025-1027 C OF 2016 &
R.S.A. NO.331 OF 2016**

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

**R.S.A. NO.331 OF 2016 (O&M)
DATE OF DECISION: APRIL 25, 2016**

Vinod Kumar

.....Appellant

VERSUS

Gulshan Rai and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Sandeep Jasuja, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.1025 C of 2016

Prayer in this application is for condonation of delay of 73 days
in filing the appeal.

The reason for delay in filing the appeal is that after the passing
of the decree, efforts were being made for compromise the matter between
the parties but the same failed as plaintiff-respondent No.1 refused to settle
the matter despite the best efforts made by the applicant-appellant as also
other common friends, which has resulted in delay of 73 days in filing the
appeal. The application is duly supported by an affidavit of applicant-
appellant.

For the reasons mentioned in the application, the same is
allowed and delay of 73 days in filing the appeal stands condoned.

C.M. No.1026 C of 2016

Prayer in this application is for leading additional evidence by producing statement of Raj Kumar-respondent No.2 (defendant No.3), who alongwith applicant-appellant is partner of M/s Bansal and Company. A suit No.242/1 of 23.12.2010 was filed by Raj Kumar against the applicant-appellant Vinod Kumar and others, wherein he has admitted that firm M/s Bansal and Company has stopped working since the year 2007.

It is the contention of counsel for the applicant-appellant that Raj Kumar, who is respondent No.2 herein and a partner of the firm M/s Bansal and Company, had stated in his statement made before the Additional Civil Judge (Senior Division) in a suit for recovery that the firm M/s Bansal and Company stopped working in the year 2007. He contends that liability, which has been fixed in the present case against the applicant-appellant as also respondent Nos.2 and 3, is subsequent to the said date and, therefore, there could be no claim after the firm having stopped functioning in the year 2007. Thus, assertion has been made that this fact clearly shows connivance between respondent No.1 (plaintiff)-Gulshan Rai and Raj Kumar, respondent No.2, who are real brothers. He, thus, contends that the said evidence is essential and necessary for just and proper decision of the case and, therefore, the application may be allowed.

I have considered the submissions made by learned counsel for the applicant-appellant and have gone through the application but do not find any justification to accept the same, especially when after recording of the findings by the trial Court vide its judgement dated 04.11.2014, where the plea with regard to connivance on the part of respondent Nos.1 and 2 has been repelled, no appeal was preferred by the apellant. Further, there

was nothing which stopped the applicant-appellant to challenge the said findings, as have been recorded by the trial Court in an appeal and, therefore, the same cannot now be taken into consideration.

Therefore, in view of the above, there is no merit in the application and the same stands dismissed.

C.M. No.1027 C of 2016 & R.S.A. No.331 of 2016

Challenge in this appeal is to the judgement and decree dated 04.11.2014 passed by the Additional Civil Judge (Senior Division), Malout, whereby suit for recovery of ₹8,30,000/- (₹7,47,000/- as principal amount and ₹83,000/- as interest at the rate of 15% per annum) has been partly decreed to the extent of the principal amount i.e. ₹7,47,000/- alongwith interest at the rate of 6% per annum from 26.12.2009 i.e. the due date on which the amount was given, till its realization. The trial Court has further fixed the liability of the defendants, according to which 30% liability was that of the appellant-defendant No.2 and 70% was that of Raj Kumar, respondent No.2 (defendant No.3), as per their respective share in the partnership firm. No appeal was preferred by the appellant-defendant No.2. Appeal, however, was filed by Gulshan Rai, respondent No.1-plaintiff, challenging the apportionment of the liability on the plea that as per Section 25 of the Indian Partnership Act, 1932, liability of the partners is joint and several and it cannot be apportioned. The said appeal has been allowed and now the liability has been fixed jointly and severally between two partners i.e. the appellant-defendant No.2 and Raj Kumar, respondent No.2 (defendant No.3).

It is the contention of learned counsel for the appellant that the

Courts below have not appreciated that the share of the appellant-defendant

No.2 was limited to the extent of 30% and that of respondent No.2 (defendant No.3) was to the extent of 70%. In fact, the appellant-defendant No.2 was only a sleeping partner in the firm M/s Bansal and Company. He contends that the trial Court has rightly fixed the liability as per the share holdings in the partnership and, therefore, there was no justification on the part of the lower Appellate Court to have interfered with the well reasoned and justified findings as recorded by the trial Court. In any case, he contends that there was connivance between two brothers, namely, Gulshan Rai, respondent No.1-plaintiff and Raj Kumar, respondent No.2 (defendant No.3) with an intention to fasten the higher liability on the appellant-defendant No.2. He further contends that their connivance is apparent from the fact that respondent No.2 (defendant No.3) has not stepped into the witness box to rebut the claim of respondent No.1-plaintiff and rather no appeal was filed by him. He, thus, contends that there being active connivance between two brothers, the appellant has been made scape goat and due process of law has been violated and in fact there has been misuse of the judicial process. Prayer has, thus, been made for setting-aside the impugned judgements of the Courts below, by dismissing the suit of respondent No.1-plaintiff.

I have considered the submissions made by learned counsel for the appellant and with his able assistance have gone through the impugned judgements.

It is not in dispute that as per the partnership deed entered into between appellant-defendant No.1-Vinod Kumar and Raj Kumar, respondent No.2 (defendant No.3), they had 30% and 70% share holdings respectively in the partnership deed. Counsel for the appellant could not

dispute the fact that there is nothing in the partnership deed, which restricts the liability of the partners to the extent of their share. If that be so, as per the provisions contained in Section 25 of the Indian Partnership Act, 1932, the liability of the partners is joint and several. The learned lower Appellate Court has, therefore, rightly proceeded to hold that the appellant-defendant No.1 and Raj Kumar-respondent No.2 (defendant No.3), being partners of the firm M/s Bansal & Company, would be jointly and severally liable.

As regards the contention of counsel for the appellant that there has been connivance between the two brothers i.e. Gulshan Rai-respondent No.1(plaintiff) and Raj Kumar-respondent No.2 (defendant No.3) who is also the partner of the Company M/s Bansal & Company, where the appellant-defendant No.2 is also the other partner, cannot be accepted as this plea was duly considered and rejected by the trial Court, against which finding no appeal has been preferred by the appellant-defendant No.2 and, thus, the same has attained finality. In any case, there is no evidence on record, which would establish connivance between the two brothers, as has been asserted by counsel for the appellant and, therefore, no interference is called for on this count as well.

No other point has been argued by learned counsel for the appellant-defendant No.2.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

**C.M. NOS.1025-1027 C OF 2016 &
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Since the main appeal stands dismissed, C.M. No.1027-C of 2015 for staying the operation of the impugned judgement and decree is also dismissed.

**April 25, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**