

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.1513 of 2014

Date of decision: 22.01.2016

Narinder Kumar

... Appellant

Versus

Satish Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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?

Present: Mr. Manoj Sharma, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

This is the plaintiffs' second appeal after the suit filed by him was dismissed by the learned Civil Judge (Junior Division), Amritsar, vide judgment and decree dated 30.04.2012 and the appeal against that was dismissed by the learned Additional District Judge, Amritsar, vide his judgment and decree dated 20.09.2013.

2. The appellant-plaintiff had filed a suit for recovery of Rs.2,00,000/- alongwith interest, also seeking rendition of accounts w.e.f. 01.01.2005, from the respondent-defendant. The respondent is the brother of the appellant and is shown to be the proprietor of M/s Des Raj Krishan Kumar Hardware Store, Amritsar.

3. The case set up by the appellant before the 1st Court was that the hardware store, by the name and style of M/s Des Raj Krishan Kumar, was being run by his late father Krishan Kumar and after his death, a dispute arose between him and the respondent, in which the respondent agreed to pay Rs.7,00,000/- working remuneration as well as goodwill of the firm, by 31.12.2004. After the said payment, the appellant-plaintiff was to be left with no right, title or interest in the firm.

The respondent is stated to have paid Rs.3,50,000/- to the appellant and also delivered the old stock of utensils lying in the firm, which had a value of Rs.1,50,000/-. Thus, of the Rs.7,00,000/- to be paid, Rs.5,00,000/- are stated to have been paid to the appellant; however, when the appellant requested the respondent to render the accounts w.e.f. 01.01.2005 as full and final payment had not been made as per the agreement entered into, and as such the appellant had not ceased to hold the share in the shop, the respondent refused to do so.

A legal notice is also stated to have been served upon the respondent through his counsel, on 13.05.2006, but without any result, thereby leading to the filing of the suit.

4. The respondent, in his written statement, other than the usual preliminary objections, stated that the appellant was habitual in changing his stand from time to time just to harass him (respondent-defendant), as earlier the appellant had sent him a legal notice dated 31.03.2006 through his counsel, in fact seeking partition of certain property, without claiming any sum of Rs.2,00,000/-. Thus, the two claims were contradictory to each other and as a matter of fact, the appellant had given wrong facts in the plaint.

5. No replication having been filed, the following issues were framed by the learned Civil Judge (Junior Division), Amritsar:-

- “1. Whether plaintiff is entitled to recover Rs.2 Lacs alongwith interest as prayed for? OPP
2. Whether plaintiff is entitled to relief of rendition of accounts w.e.f. 1.1.2005? OPP
3. Whether suit of plaintiff is not maintainable? OPD
4. Whether plaintiff has no locus standi to file present suit? OPD
5. Relief.”

The appellant examined himself as PW1 and one Vijay Kumar as PW2 and closed his evidence.

In his testimony, the appellant only reiterated the contents of the plaint.

PW2, Vijay Kumar, is stated to be the brother-in-law of the appellant, who is also shown, in the judgment of the learned 1st Court, to have deposed on the same lines as PW1.

6. The respondent also examined himself as DW1 and one Swaran Singh as DW2.

(Later in the judgment, the numbers assigned to these defence witnesses have been reversed by the learned Civil Judge).

The respondent is stated to have also deposed in tune with his written statement, while admitting the legal notice (Ex.D1) sent by the appellant. He further stated that the properties left behind by their father had already been partitioned between the appellant and him and that he had also filed a civil suit titled Satish Kumar v. Narinder Kumar which had already been decided in his (respondent-defendant Satish Kumars') favour, by the

learned Civil Judge (Junior Division), Amritsar, vide his judgment and decree dated 08.12.2011.

The other defence witness is also shown to have deposed on the same lines.

7. The agreement by which the sum of Rs.7,00,000/- is stated to have been agreed to between the parties, was referred to as Mark-A in the 1st Court, which was refuted by the counsel for the respondent on the ground that no such compromise was entered into and that the agreement produced, being merely a photocopy, could not be read into evidence, no application for leading secondary evidence having been filed.

8. The learned Civil Judge, after hearing arguments and appraising the evidence, came to the conclusion that no document showing the date, month and year of the agreement, that was alleged to have been entered into, by which Rs.7,00,000/- were agreed to be paid by the respondent to the appellant, had been proved in Court. The Court also did not agree with the contention of the appellant that the original agreement was in the custody of his uncle because the said uncle was not examined, nor did he appear in the Court. The evidence of the plaintiff (appellant herein) having been closed by himself, with no witness to the said agreement also having been produced, the liability of the respondent to pay Rs.2,00,000/- was held to be not proved.

9. It needs to be noticed here by this Court that no certified copy of the judgment and decree of the learned Civil Judge (Junior Division), Amritsar, has been annexed with this appeal and only a typed copy has been filed (without any application for dispensing with the need to file a certified copy). However, be that as it may, in the typed copy filed with this appeal,

no amount of Rs.7,00,000/- has been mentioned in para 2 of the judgment, with a blank lined space left to fill in the figure. This Court has, therefore, taken that the amount (Rs.7,00,000/-) to be that which should have been filled in the blank lined space left in para 2 of the judgment of the Civil Judge, both, from a reading of the rest of the judgment, as also from a perusal of the judgment of the 1st appellate court.

10. Coming back to what was held by the learned Civil Judge, on the issues of maintainability and locus of the appellant to file the suit, it was held that oral evidence alone was not sufficient to prove the case of the appellant and with not even a single document in support of his contention, the suit was not even maintainable.

Consequently, it was dismissed.

11. The 1st appellate court also held against the appellant, on the basis of the fact that the entire claim for recovery of Rs.2,00,000/-, was only on the basis of an oral compromise, accompanied by a memorandum of writing, behind which the respondent is shown to have paid Rs.3,50,000/- against receipt and also to have delivered an old stock of utensils valued at Rs.1,50,000/-.

The said writing, not proved by any witness other than the appellant himself supporting it, was not accepted by the lower appellate court either and further, it was held that the appellant had admitted the legal notice issued earlier on 31.03.2006, seeking partition of the property. Yet, even in the said legal notice, not even a reference had been made to the said memorandum of writing.

Still further, it was held that though the appellant, in para 6 of his plaint, had pleaded that the respondent had agreed to pay the amount in

the presence of Shiv Kumar son of Des Raj and Vijay Kumar son of Mangat Ram, Shiv Kumar had not been examined and Vijay Kumar in his cross-examination had stated that he alongwith Shiv Kumar had got the compromise effected, with the original writing kept by Shiv Kumar. He had also admitted that Shiv Kumar is a resident of Amritsar but despite that, the appellant had not examined him to prove the said writing.

12. As regards maintainability of the suit, the lower appellate court held that since the case of the appellant himself was that the accounts stood settled and Rs.2,00,000/- remained unpaid, the question of seeking rendition of accounts did not arise.

Having come to the aforesaid conclusions, the first appeal filed by the appellant was also dismissed.

13. Mr. Manoj Sharma, learned counsel appearing for the appellant, other than repeating the contents of the plaint, made an argument to the effect that the appellant should have been allowed to examine Shiv Kumar as a witness, as the compromise deed was stated to be lying with him.

On specific query from the Court, as to whether any revision petition was filed against any order of the learned Civil Judge, closing evidence to the detriment of the appellant, learned counsel submitted that no such revision petition was ever filed.

14. Having considered the aforesaid argument and the judgments of the courts below, I find even the argument raised before this Court to be wholly without merit, in view of the fact that, firstly, it was not shown that the evidence of the appellant-plaintiff was closed by the learned Civil Judge, rejecting any plea to lead further evidence. As a matter of fact, it is recorded in para 5 of that judgment, that the evidence was closed by the

plaintiff himself, after examining himself and Vijay Kumar.

Hence, there is no basis to the argument raised by learned counsel for the appellant, because if he wished to examine Shiv Kumar in respect of any written compromise stated to be lying with that person, there was nothing to stop him from doing so. He not having led any evidence with regard to any document on which the respondent had agreed to pay Rs.7,00,000/- to him, of which Rs.2,00,000/- remained unpaid, I find no reason to interfere with the judgments of the courts below, holding that no document whatsoever had been produced to support such contention.

No doubt, Vijay Kumar, PW2, also supported the case of the appellant, to the effect that the said compromise deed was effected before him and Shiv Kumar, but with no compromise deed actually having been produced in court and with the testimony of the two witnesses of the plaintiff, refuted by the testimony of two defence witnesses, I see no ground on which to agree with the submissions made before this Court either.

Keeping in view the above, I find no merit in this appeal, which is dismissed *in limine*, with no order as to costs.

22.01.2016
dinesh/vcgarg

(AMOL RATTAN SINGH)
JUDGE