

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

RSA-4881-2015 (O&M)

Date of decision: 05.05.2016

Dhanwant Rai Mittal

...Appellant(s)

Versus

Navdeep Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Aseem Kataria, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The defendant-appellant has filed the instant regular second appeal challenging the judgment and decree dated 16.02.2015, passed by learned District Judge, Ludhiana (in short, 'first appellate Court') affirming the judgment and decree dated 23.07.2011, passed by learned Civil Judge, Junior Division, Ludhiana (in short, 'trial Court'), whereby, the suit filed by the plaintiff-respondent for recovery of Rs.7,50,000/-, along with interest at the rate of 9% per annum was decreed with costs.

It is the case of the plaintiff-respondent that in the year 1989, on the asking of Manjit Singh, his brother-in-law, he gave

loan of Rs.50,000/- in cash to defendant-respondent, Dhanwant Rai Mittal. He also handed over two drafts of Rs.3,50,000/- each by way of loan. As advised by defendant-appellant, the drafts were got prepared in favour of Gurcharan Dass Gupta and Harcharan Dass, drawn on Punjab and Sind Bank. Defendant-appellant issued a receipt dated September 02, 1989, for a sum of Rs.7,50,000/-, in favour of the plaintiff and agreed to pay interest at the rate of 24% per annum on the said loan amount. He also agreed to pay the interest regularly. When the plaintiff-respondent demanded his money back, along with interest, defendant-appellant gave a cheque of Rs.2,00,000/- drawn on State Bank of India to the plaintiff which was appropriated towards payment of interest. The said cheque was signed by Rajiv Mittal (defendant No.3 in the suit), one of the sons of defendant-appellant. Thereafter, another cheque by Lalit Mittal (defendant No.2 in the suit), another son of the appellant in the sum of Rs.2,50,000/- was handed over to the plaintiff-respondent by the defendant-appellant as part payment of the abovesaid loan amount. However, the said cheque was dishonoured by the concerned Bank on account of insufficient funds. The plaintiff-respondent also served notice under Section 138 of the Negotiable Instruments Act, to Lalit Mittal (defendant No.2 in the suit). The defendant-appellant failed to repay the

aforesaid loan amount along with interest which necessitated the filing of the suit. It is apposite to mention that defendant Nos.2 and 3 were impleaded as proper parties in the suit being sons of defendant-appellant but no relief was claimed against them.

The defendant-appellant challenged the jurisdiction of Civil Courts at Ludhiana to entertain and try the suit. It is the case of the defendant-appellant that actually, on September 02, 1989, defendant-appellant went to Punjab and Sind Bank Branch at Delhi, where one Manjit Singh, working there, told him that the latter had already handed over two drafts of Rs.7,50,000/- to the father of the defendant-appellant without any receipt and on his request, the defendant-appellant, though reluctant at the first instance, issued a receipt regarding the abovesaid drafts, on the letterpad of the bank. Since the drafts were not before the defendant-appellant, no details thereof were mentioned in the receipt. Actually, no amount was ever paid to the defendant-appellant, who never had any dealings with the plaintiff.

It is further pleaded by the defendant-appellant that actually, Rajiv Mittal (defendant No.3) advanced a sum of Rs.50,000/- in cash and a sum of Rs.2,00,000/- by means of cheque No.569425 dated July 02, 1992, to the plaintiff as loan. Defendant No.2 in the suit, Lalit Mittal, issued cheque of Rs.2,50,000/-, in his

own name and when he was busy talking to some persons, on July 30, 1992, the plaintiff succeeded in stealing the said cheque. When defendant No.2 realized about the theft of aforesaid cheque, he got its payment stopped.

Defendant Nos.2 and 3, filed separate joint written statements. The tone and tenor of their written statement is virtually the same as that of the defendant-appellant.

Learned trial Court, after appreciating the evidence brought on record, decreed the suit of the plaintiff-respondent with costs against the defendant-appellant and the plaintiff-respondent was held entitled to recover amount of Rs.7,50,000/- along with interest @ 9% per annum from the date of execution of receipt till the date of payment of Rs.2,00,000/- by way of cheque and the plaintiff was also held entitled to interest @ 9% per annum on the remaining amount of Rs.5,50,000/- till the date of decree with future interest @ 6% from the date of decree till its realization. It was further made clear that the amount of Rs.2,00,000/- paid by defendant No.1 by way of cheque issued by Rajiv Mittal was liable to be adjusted in the total amount of Rs.7,50,000/-.

The defendant-appellant unsuccessfully challenged the judgment and decree of learned trial Court. Still dissatisfied, he has approached this Court by way of the instant appeal.

Learned counsel contends that both the Courts below have misread and misconstrued the evidence led by the parties on record. The suit filed by the plaintiff-respondent is neither based upon promissory note or *hundi* nor any bond but only upon receipt, Ex.PW3/1, which is not a negotiable instrument and that too not in the name of the defendant-appellant, thus, no liability could be fastened upon him. The Courts below failed to appreciate the fact that the alleged receipt Ex.PW3/1 talks about two drafts but their serial number, value and date are conspicuously missing. Even the said receipt is silent regarding payment of Rs.50,000/- in cash, as has been alleged by the plaintiff-respondent in the plaint. The jurisdiction of civil Courts at Ludhiana to try and entertain the suit has also been challenged by learned counsel for the appellant.

I have heard learned counsel for the appellants and perused the case file.

It is pertinent to recapitulate the admitted facts. Manjit Singh is brother-in-law of the plaintiff-respondent (sister's husband). He was working in Punjab and Sind Bank at Delhi in the year 1989. There is no mention in Receipt Ex.PW3/1 dated September 02, 1989, about serial number, value and date of the drafts. The handwriting and signatures on receipt Ex.PW3/1 are that of the defendant-appellant. There is no mention on the said

receipt that defendant-appellant issued the same on behalf of his father.

The contention of the defendant-appellant that receipt Ex.PW3/1 was procured from him by Manjit Singh by playing fraud or by misrepresentation holds little water. It is settled principle of law that whoever desires the Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts actually exist. The defendant-appellant has miserably failed to prove the story propounded by him. The hollowness of the case of the defendant-appellant is exposed by the fact that memo dated August 04, 1992, Ex.DW2/B, issued by banker of defendant No.2 shows that the cheque No.289284 was dishonoured on its presentation on account of insufficient funds as has been pleaded and proved by the plaintiff-respondent and not account of stoppage of payment by the drawer, as projected by the defendant-appellant. The defendant-appellant has tried to manipulate that cheque in the sum of Rs.2,50,000/-, issued by defendant No.2 was stolen by the plaintiff on July 30, 1992. However, no DDR or FIR has been placed on record by him to prove the said assertion. On the other hand, the preponderance of evidence led by the plaintiff-respondent unerringly proves on record that the defendant-appellant in fact

took loan on Rs.7,50,000/- from the plaintiff-respondent against receipt Ex.PW3/1 and thereafter, he failed to repay the said loan except for amount of Rs.2,00,000/-, which has been rightly adjusted by the learned Courts below while passing the impugned judgments and decrees. The rate of interest granted by the Courts below is neither excessive nor exorbitant. Since the loan transaction took place at Ludhiana, the civil Courts had the territorial jurisdiction to entertain and try the suit. No interference is called for.

This Court neither finds any error in the judgments and decrees of the Courts below, nor any element of question of law, much less substantial, is involved in the present appeal. Hence, the appeal is hereby dismissed. No costs.

05.05.2016

atulsethi

(JITENDRA CHAUHAN)
JUDGE