In the High Court of Punjab and Haryana at Chandigarh

R.S.A. 5061 of 2015
Date of Decision: January 12, 2016

Baljinder Singh

... Appellant

Versus

Kulwinder Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the local papers may be allowed to see the judgments?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. A.S. Gill, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.(Oral)

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 10.09.2013 passed by learned Additional Civil Judge (Senior Division), Nakodar whereby suit filed by the plaintiff/appellant for recovery has been dismissed, as well as, against the judgment and decree dated 15.04.2015 passed by learned Additional District Judge, Jalandhar, whereby appeal preferred by the appellant/plaintiff has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for recovery of Rs.3,84,000/- against the defendant to the effect that defendant is running a travel agency. Plaintiff came in contact with the defendant in the month of December 2003. Defendant told the plaintiff that she would send him to Germany. Since the brother of the plaintiff is in Germany, so the plaintiff accepted the offer made by the defendant and she asked the plaintiff that she would get a sum of Rs. 9 lacs for sending him to Germany. In the month of January 2004, plaintiff paid a sum of Rs. 1 lac as part payment to the defendant in the presence of Joginder Singh and remaining amount of Rs. 9 lacs was to be paid after getting the visa from German Embassy, but the visa was declined to the plaintiff. Plaintiff approached the panchayat so that defendant may be pressurized to return the amount of Rs. 1 lac, but the defendant put it off with one pretext or the other and assured that on the next time he will get visa as concerned man was on leave on the relevant date in German Embassy, so the visa was declined. The defendant further told the plaintiff that if the plaintiff would get sponsorship papers from Germany then the defendant would charge Rs. 7 lacs only. The defendant told the plaintiff to pay a sum of Rs. 2 lacs more to her and the remaining amount of Rs. 4 lacs would be received by the defendant after getting visa for plaintiff. So, plaintiff paid a sum of Rs. 2 lacs more to the defendant through cheques bearing Nos. 0212661 dated 15.10.2007 and 0212662 dated 24.10.2007 for a sum of Rs. 1 lac each. Again the visa was declined to the plaintiff by the German Embassy. Thereafter, plaintiff filed a criminal complaint under Sections 406/420 IPC against the defendant. The present suit was filed for recovery.

Upon notice, defendant appeared and filed written statement and took a stand that plaintiff and his sister borrowed an amount of Rs. 8

lacs from her dishonestly, with fraudulent intentions by prevailing upon the defendant with promise to return/adjust in land.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

"1. Whether defendant is running a travel agency?OPP

2. Whether defendant has received any amount from plaintiff with the pretext that he will sent him to abroad? OPP

3. Whether defendant failed to send plaintiff abroad and to return money, OPP

4. Whether plaintiff is entitled to recovery of any amount or interest from defendant, if so to what extent and at what rate? OPP

5. Whether present suit is maintainable? OPP

6. Whether plaintiff has concealed true and material facts from this Hon'ble Court? OPD

7. Whether plaintiff and his sister borrowed a sum of Rs. 8 lacs from defendant, if so, its effect? OPD

8. Whether present suit has been filed by plaintiff with an intention to harass the defendant? OPD

9. Whether plaintiff is estopped by his act and conduct from filing this present suit? OPD

10. Relief."

The Court of first instance, after appreciating the evidence on record, accepted the version of the defendant and dismissed the suit vide judgment and decree dated 10.09.2013. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 15.04.2015. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 15 of grounds of appeal, arise for consideration in this second appeal:-

> *"a) Whether in the facts and circumstances of the instant case, the approach of the learned courts below can be sustained in the eyes of law?*
>
> *b) Whether the learned courts below have mis-read and mis-appreciated the evidence on record and have drawn wrong inference from proved facts by applying the law erroneously?*
>
> *c) Whether the learned courts below have ignored the material evidence and have acted on no evidence while passing the impugned judgment and decree?*
>
> *d) Whether the wrong and arbitrary enquiry of the police, has no relevance, when the plaintiff has proved his case by leading cogent and reliable evidence?*

Learned counsel for the appellant vehemently contended that admittedly, two cheques bearing Nos. 0212661 dated 15.10.2007 and 0212662 dated 24.10.2007 for a sum of Rs. 1 lac each have been received by the defendant. He further contended that said cheques have been proved by PW3 Buta Singh, bank official. Learned counsel further contended that complaint Ex.P8 was moved by the plaintiff to the police authorities regarding the same very incident. So far as payment is concerned, at least Rs. two lacs which have been paid by two cheques, has been duly proved on record.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Admittedly, both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the stand taken by the defendant. The Court of first instance recorded the following findings:-

> *"22. The plaintiff in the present case is seeking a total*

recovery of Rs. 3 lacs from the defendant i.e. Rs. 1 lac paid in cash by the plaintiff to the defendant in January 2004 and Rs. 2 lacs paid by him to the defendant in the October 2007 by way of two cheques, which were allegedly obtained by the defendant from him on the pretext of sending him to Germany. On the other hand, it is the version of defendant that actually plaintiff and his sister Kulwinder Kaur took a loan of Rs. 8 lacs from the defendant on different dates but they failed to return the loan amount and only a sum of Rs. 3 lacs has been repaid by the plaintiff to the defendant and still an amount of Rs. 5 lacs is outstanding against plaintiff and his sister. It is not disputed by the defendant that she has received Rs. 3 lacs from the plaintiff in aforesaid manner. So far as the recovery of Rs. 1 lac paid by the plaintiff to the defendant in January 2004 is concerned, the same is clearly time barred as the present suit was filed by the plaintiff on 10.03.2010 i.e. more than three years after the said amount was paid by the plaintiff to defendant and thus its recovery is barred by the Limitation Act. The fact that the remaining Rs. 2 lac were received by defendant from the plaintiff in October 2007 vide two separate cheques which were got encashed by defendant has not been specifically disputed by the defendant in this case. The said fact also stands proved on record from the evidence of PW3 Boota Singh who was a summoned witness from the concerned Branch of Pb. & Sink Bank and who proved the encashment of the said two cheques in favour of defendant and he also proved on record the statement of account of plaintiff as Ex.PW3/A. The recovery of said Rs. 3 lacs claimed by plaintiff in this case is within the period of Limitation and is not time barred. However, the defendant in the present case has also proved on record from the evidence of DW1 Major Singh who is the concerned Branch Manager of the bank where the defendant is having an account that a cheque dated 07.01.2002 for Rs. 1 lac issued by defendant Kulwinder Kaur was encashed by the *plaintiff Baljinder Singh. But importantly, the said transaction whereby the plaintiff received said sum of Rs. 1 lac from the defendant has not been explained by the plaintiff in any manner in this case. Neither the plaintiff has disclosed his any such transaction with the defendant in his plaint nor has explained the same in his evidence, rather he denied the same in his replication. Thus, the plaintiff has clearly suppressed the said material fact from the court which goes to support the version of defendant that actually she had advanced some money to the plaintiff and his sister Kulwinder Kaur, out of which only a sum of Rs. 3 lacs has been returned by the plaintiff as per the payment mentioned in the plaint itself. The version of defendant in this case further stands fortified after the perusal of pleadings, statement of defendant Kulwinder Kaur dated 31.10.2009 and order dated 31.10.2009 in a suit filed by the plaintiff Baljinder Singh and his sister Kulwinder Kaur against defendant Kulwinder Kaur and others which was titled as "Kulwinder Kaur and another vs. Kulwinder Kaur and others", the copies of which are Ex.D1 to Ex.D4 on record (certified copy of the plaint in the said suit is Ex.D2 and certified copy of its written statement is Ex.D3). Their perusal shows that the said suit was a suit for permanent injunction filed by the plaintiff Baljinder Singh and his sister Kulwinder Kaur against defendant Kulwinder Kaur and others for restraining them from interfering in the running of a school and also for restraining them from recovering any illegal and alleged amount from the plaintiffs, except in due course of law. In the said plaint Ex.D2, the plaintiff along with his sister alleged that they have not borrowed even a single penny and are not even known to the defendants. Materially, the said suit was instituted by the plaintiff Baljinder Singh just six months before the filing of the present suit but in that earlier suit, the plaintiff did not allege about any money being paid by him to the defendant Kulwinder Kaur at any stage on the pretext of* *being sent abroad by her. Had there been any such transaction between the parties as alleged by the plaintiff in this case, then he would have certainly and naturally disclosed the same in the said earlier suit filed by him against the defendant Kulwinder Kaur. But just to opposite, he stated in the plaint filed by him that he is not even known to the defendant. The fact that the said suit was a suit for permanent injunction for restraining the defendants from recovering any amount from the plaintiffs further gives support to the defendant's version that plaintiff owned money to her. On the other hand, the defendant Kulwinder Kaur in the said suit in the same very manner as in the present suit alleged in her written statement which is Ex.D2 that plaintiff and his sister have taken a loan of Rs. 8 lacs from her and that they have returned only a sum of Rs.2 lacs to her by way of two cheques which are proved as Ex.P2 and Ex.P3 in the present case. Further, in a compliant filed by the plaintiff against the defendant before the police on the same very facts as alleged in the present case, an enquiry was conducted by the concerned police, which found the complaint of plaintiff to be false and it was also found that actually plaintiff still owes a sum of Rs. 5 lacs to the defendant, the proceedings of said enquiry conducted by the police having been proved on record as Ex.DW3/1 to Ex.DW3/9 respectively. Further, while it is the version of plaintiff himself that he first gave money to the defendant in January 2004 but he in his cross-examination during evidence stated that he approached the defendant for demand of money during the period w.e.f. 2003 to 2007. PW1 Joginder Singh who is none else but brother of plaintiff Baljinder Singh also deposed in his cross-examination that he does not know as to how much money was borrowed by his brother and sister from Kulwinder Kaur as he was not a party to the said transaction. Plaintiff has also failed in proving in this case that the defendant is a travel agent as alleged by him. Thus, in view of the evidence available on* *record and in view of my aforesaid detailed discussion, it is clear that plaintiff has not come to the court with clean hands and is guilty of suppression of material facts and his such default or active concealment of facts/fraud clearly disentitles him from obtaining any relief from the court as it is a settled law that one who approaches the court for justice must come with clean hands. It was observed by the Hon'ble Supreme Court in* ***<u>Amar Singh vs. Union of India, 2011(5) RCR (Civil) 386</u> & <u>Ritesh Tiwari & Another vs. State of U.P. & Others 2010 (10) SCC 677</u>*** *that truth should be the guiding star in the entire judicial process. Every trial is a voyage of discovery in which the truth ins the quest. An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. The Hon'ble Supreme Court further in "****<u>Dalip Singh vs. State of U.P. & Others (2010) 2 SCC 114"</u>*** *deprecated the conduct of dishonest litigants and observed that truth constitutes an integral part of justice delivery system. The quest for personal gain has become so intense that those involved in the litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure foundation of justice with tainted hands, is not entitled to any relief whatsoever, interim or final.*

23. Thus, to secure that the justice is not diverted into wrong hands, wrong doers must be denied the profit of false and frivolous litigation and they should be prevented from introducing and relying upon false pleadings. Accordingly, in view of my aforesaid detailed discussion and in view of the aforesaid discussed law laid down by the Hon'ble Supreme Court of India, it is clear that the plaintiff has failed in proving in this case that he paid amount of Rs. 3 lacs to the defendant *on the promise of sending him abroad, rather it stands proved by preponderance of probabilities that plaintiff and his sister borrowed a sum of money from defendant which they failed to repay and it also stands proved on record that plaintiff has suppressed material facts from the court and this suit has been filed by the plaintiff to harass the defendant. ......"*

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by learned counsel for the appellant. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

January 12, 2016 **[Paramjeet Singh Dhaliwal]**
vkd **Judge**