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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-676-2016 [O&M]

Date of Decision : February 12th, 2016

Roshan Lal

.... Appellant

Versus

Hari Krishan and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Nitin Kant Setia, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

For the reasons recorded in the application bearing CM NO. 1837-C of 2016, which is supported by an affidavit, delay of 89 days in filing the appeal is condoned.

CM stands disposed of.

Main Appeal

Challenge in the present Regular Second Appeal is to the judgment and decree dated 29.7.2015 passed by Additional District Judge, Chandigarh, whereby the suit filed by Hari Krishan, plaintiff was decreed while reversing the judgment and decree dated 3.5.2014 passed the Court of first Instance.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff had filed a suit for recovery of Rs.40,000/- on

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account of Principal and interest, on the ground that the defendant No.1 had obtained loan of Rs.45,000/- on 11.10.2002 and in consideration thereof, he had executed agreement as well as other necessary document. Defendants No. 2 to 4 stood guarantors for defendant No.1. Thereafter, re-payment was not made as per financial discipline laid-down between the parties. Legal notice was also issued on 10.9.2005, but the defendants failed to make re-payment and as such suit before the Court of first instance.

4. Defendant No.2 appeared and contested the suit taking the plea that the plaintiff is a money lender without having required license and he was not competent to advance any loan. Interest claimed was in violation of directions of Reserve Bank of India and it was prayed that the suit be dismissed.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiff. The appeal filed before the Court of first Appeal was accepted and the suit of the plaintiff for recovery was decreed vide judgment and decree dated 29.7.2015. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant mainly submitted that the loan was advanced to defendant No.1 and the appellant – defendant No.2 is guarantor. The present litigation is on the basis of connivance between defendant No.1 and the plaintiff and that is why, defendant No.1 chose to be proceeded against *ex-parte* so that suit be decreed against guarantors and recovery be effected from the present appellant. More so, the plaintiff

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had already filed different litigation before different Courts and the modus operandi of the plaintiff is to seek re-payment from the guarantors only while leaving aside the principal borrower.

7. Learned counsel for the appellant further submitted that the Court of first Appeal has not considered the fact that the plaintiff was not having license for money lending and thus, he was not authorized to file the present suit. The interest was charged at excessive rate, which is not permissible and all these facts have been completely ignored by the Court of first Appeal and as such the impugned judgment and decree are liable to be set-aside and the present appeal be accepted.

8. Having considered the submissions made by learned counsel for the appellant and appraisal of the case file, this Court is of the considered view that the plea taken by the appellant that the present litigation is in collusion with plaintiff and defendant No.1, does not find any basis on the record. The decree has been passed against the defendants including defendant No.1, who is the principal borrower. Admittedly, the present appellant is a guarantor and he had executed documents of his own and on the basis of his guarantee, loan was advanced to defendant No.1. Now, he cannot take such a plea that defendant No.1 is in collusion with the plaintiff without therebeing any basis on the file.

9. As regards to the plea taken by the appellant that the plaintiff is carrying on money lending business without any license, this aspect has been dealt with in detail by the Court of first Appeal. The Court below has observed that the money lending license [Ex.P16] was valid upto 4.2.2009 in favour of the plaintiff, whereas, the suit was filed in the year 2006. Plaintiff was issued money lending license [Ex. P15] in the year 1994. That

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way, on the date of filing of suit, the plaintiff was having money lending license to give loan and as such, he could file the suit as per provisions of Section 3 of the Money Lenders Act, 1938. There is nothing on record to show that the money lending license was cancelled and the findings recorded by the Court of first Appeal on this point are based on facts of the case and correct proposition of law and the said findings do not call for any interference.

10. Otherwise, it has been proved on the file that a sum of Rs.40,000/- was given as a loan to defendant No.1 and re-payment not made as per financial discipline laid down between the parties and the defendants are liable to make payment. The findings recorded by the Court of first Appeal do not call for any interference. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure.

11. In view of the above, the present Regular Second Appeal stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

February 12th, 2016
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