

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 968 of 2016
Date of decision : March 1, 2016

Inderjit Singh

..... Appellant

Versus

Naresh Puri

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Tarun Vir Singh Lehal, Advocate
for the appellant.

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

Amit Rawal, J (oral).

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower appellate court whereby the suit has been partly decreed. In essence, defendant has been called upon to pay a sum of ₹30 lacs in a suit for recovery of ₹65 lacs (₹50 lacs as principal and ₹15 lacs as interest) along with interest @ 6% per annum from the date of institution of suit till the actual realization.

Learned counsel appearing on behalf of the appellant submits that the respondent-plaintiff has failed to discharge onus viz-a-viz payment of amount vide cheque No. 557372 dated 28.6.2007 and 557354 dated 4.8.2007 which was to the tune of ₹30 lacs and ₹20 lacs by way of cash. The aforementioned averments in

the suit were emphatically denied by alleging therein that the defendant had funded election of the respondent-plaintiff and it is in lieu of that obligation was discharged by way of cheque. After noticing the aforementioned fact the trial court dismissed the suit holding that respondent-plaintiff failed to discharge the onus. However, the lower appellate court reversed the judgment and decree and the suit viz-a-viz payment of cheque was partly decreed. No other evidence has been lead except the cheque and therefore, the onus as enshrined under Section 101 of the Indian Evidence Act, 1872 has not been discharged. The same reads thus:

“Burden of proof.— Whoever desires any 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 exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

I have heard learned counsel for the appellant and appraised the paper book and of the view that there is no merit in the appeal. Section 118 of the Negotiable Instruments Act, 1881 reads thus:-

“Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

The aforementioned presumption has not been proved except a self serving statement. Cheques had been paid and defendant had failed to prove the same. Except a self serving statement, no other corroborative evidence has been lead. Rightly so, the appellate court decreed the suit viz-a-viz amount mentioned in the appeal.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgment and decree of the lower appellate court.

No substantial question of law arise for

determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

March 1 , 2016
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