

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

**SAO No.57 of 2016 (O&M)
Decided on: 29.07.2016**

Jaswinder Singh

....Appellant

Versus

Gursimran Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. N.S. Sodhi, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 04.02.2016 passed by the Additional District Judge, Moga whereby the appeal preferred by the respondents/plaintiffs against the judgment and decree dated 15.10.2012 passed by the trial Court was allowed and the matter has been remitted to the trial Court for decision of the suit afresh after affording an opportunity to the respondents/plaintiffs to produce the succession certificate and then to decide the suit on merits.

Gursimran Singh and others, the legal heirs of Harphool Singh son of Ajaib Singh filed a suit for recovery on the plea that the petitioner/defendant took a loan of Rs.5,76,000/- from their father – Harphool Singh on 05.08.2008 against a pronote and receipt in presence of Iqbal Singh son of Malkit Singh resident of village Sekha Kalan, District Moga and agreed to repay this amount with interest @ 2½% per month but claimed @ 12% per annum. Harphool Singh passed away in January, 2009 and his wife Harwinder Kaur died about 17 years

back. The petitioner/defendant failed to clear the due amount despite demand.

The petitioner filed the written statement, controverted the allegations with regard to his having taken a loan from Harphool Singh, execution of pronote and receipt and his liability to pay the suit amount. He raised preliminary objections *qua* maintainability of the suit and *locus standi* of the plaintiffs to file the suit.

The learned trial Court framed the following issues for determination:-

1. *Whether defendant took a loan of Rs.5,76,000/- from the plaintiff (Harphool Singh) and executed pronote and receipt dated 05.08.2008, in his favour? OPP.*
2. *Whether the plaintiffs have locus standi to file the present suit? OPD.*
3. *Whether the plaintiffs are entitled to borrowed amount along with interest? If so, at what rate. OPP.*
4. *Relief.*

The parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties, the learned trial Court answered issue No.1 in favour of the respondents/plaintiffs but issue No.2 was decided against them with the finding that the plaintiffs are mandatorily required to produce a succession certificate regarding debt of Rs.5,76,000/- in absence whereof, bar envisaged by Section 214 of the Indian Succession Act (in short 'the Act') comes into play, therefore, the plaintiffs have no locus standi to file and pursue this case. As a sequel to findings on issues

No.2 and 3, the suit was ordered to be dismissed.

The Court of appeal, after taking into consideration the provisions of Section 214 of the Act, has held in para 18, reads thus:-

“In the light of factual matrix, this Court is of the view that learned lower court has dismissed the suit of appellants-plaintiffs in haste without affording an opportunity to them to produce succession certificate for amount in question, which has caused miscarriage of justice to appellants-plaintiffs. With these observations, appeal in hand is accepted, impugned judgment and decree are set-aside and suit is remanded to successor court of Sh. Rajeev K. Beri, the then, Additional Civil Judge (Senior Division), Moga with a direction to afford an opportunity to appellants-plaintiffs to produce succession certificate and then proceed to decide the suit on merits.”

Counsel for the appellant would contend that as the respondents filed the suit without obtaining a succession certificate and further did not bother to obtain any such certificate despite an objection raised in the written statement challenging their *locus standi* to file the suit that remained pending for more than one year, there was no reason for the Court of appeal to set-aside the judgment and decree and remit the matter for decision afresh more particularly in the circumstances that issue with regard to *locus standi* was not treated as a preliminary issue, in order to attract applicability of the provisions of Order 41 Rule 23 of the Code of Civil Procedure. It is further argued that if the order passed by the Court of appeal is allowed to sustain, it would amount to putting premium over lackadaisical and indifferent attitude of the

respondents/plaintiffs, for no fault attributable to the appellant.

I have heard counsel for the appellant, perused the paperbook and the order impugned.

It is an undisputed position of the case that claim of the respondents/plaintiffs for recovery of the suit amount on the basis of pronote and receipt purported to be executed by the petitioner in favour of Sh. Harphool Singh, predecessor-in-interest of the respondents/plaintiffs was upheld by the trial Court in the light of detailed consideration of pleadings of the parties and evidence adduced in support of rival contentions. Nevertheless, claim of the respondents/plaintiffs was rejected on a technical ground that they did not obtain a succession certificate envisaged under Section 214 of the Act. Technicalities of law cannot be allowed to stand in the way of substantial justice. The respondents could well obtain a succession certificate even during pendency of the suit if they had been so advised by their counsel. As a meritorious claim of the respondents had failed due to their failure to comply with the requirement of obtaining a succession certificate, I do not find any error much less illegality in the impugned order, setting-aside the judgment and decree passed by the trial Court with a direction to proceed with the suit after the respondents/plaintiffs obtain a succession certificate by initiating appropriate proceedings before a competent Court of law. However, any delay in finalization of the proceedings in the suit due to failure of the respondents to obtain a succession certificate may be raised by the petitioner at an appropriate stage *qua* his liability to pay interest, if

claim of the respondents to recover the principal amount is accepted.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

29.07.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No