

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

RSA No.6201 of 2015 (O&M)

Date of Decision.02.12.2016

Jarnail Singh

.....Appellant

Vs

Gurmeet Kaur and another

.....Respondents

Present: Mr. Pardeep Goyal, Advocate
for the appellant.

Mr. Harshit Jain, Advocate
for respondent Nos.1 and 2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit seeking recovery of ₹96,000/- along with interest @9% per annum from the date of filing the suit till the date of decree and future interest @6% per annum till actual realization of the amount and for further relief of mandatory injunction directing the defendant to deposit an amount of ₹50,000/- in the shape of fixed deposit in any nationalized bank or in the post office in favour of plaintiff No.2, has been decreed by both the Courts below.

Mr. Pardeep Goyal, learned counsel for the appellant-defendant submits that the aforementioned suit was filed on the basis of alleged agreement dated 12.08.2009, Ex.P1 whereby an adjustment had been arrived at to do certain acts, provided that the respondent-plaintiff had undertaken to look after her ailing husband, who is stated to be living with the respondent-wife.

He submits that Ranjit Singh, husband of the respondent and

father of the respondent No.2, had met with an accident and had become of unsound mind. Respondent had taken the minor child to her paternal house and started living there. She did not take care of her ailing husband. The matter reached to the police station, resulting into execution of the aforementioned settlement but she did not perform her part of the agreement, in essence, did not live with the husband, much less, did not take care of him. In this backdrop of the matter, the respondent did not honour his part of the agreement.

The suit aforementioned simpliciter for recovery and mandatory injunction was not maintainable and had to be filed as per the provisions of Specific Relief Act. The appellant-defendant in the Courts below offered to comply with his part of the agreement, provided the respondent-plaintiff also volunteered but having failed to do so, the Court below yet, ignoring the aforementioned fact, decreed the suit which is a gross illegality and perversity.

He further drawn attention of this Court to the order dated 14.07.2016 where during the course of the hearing of the aforementioned appeal, dispute arose regarding the custody of the ailing husband as the wife insisted that she is taking care of the husband. To verify the aforementioned fact, warrant officer was appointed and as per report, Ranjit Singh is living with his father Jarnail Singh i.e. the appellant-defendant.

Per contra, Mr. Harshit Jain, learned counsel appearing for the respondent submits that the client is willing to perform her part of the contract, provided this Court issues an appropriate direction. Though the agreement indicated a mutual role to be played by the parties since the appellant-defendant failed to honour the same, the respondent-plaintiff was

compelled to leave matrimonial house and started living with her brother as the place, where her brother is residing, has a good school. It is only for the betterment of the child she moved out. She had no mala fide intention to cause harassment to the father-in-law and is an obedient daughter-in-law and wife, thus, urges this Court for confirming the finding rendered by both the Courts below, much less, the concurrent finding of fact cannot be interfered with unless and until there is gross illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is merit and force in the submissions of Mr. Pardeep Goyal, for, the respondent had not been fair to this Court and insisted the custody of the husband with her and wanted to support the judgments under challenge by taking the aid of the compromise-cum-settlement Ex.P1. However, the report of the warrant officer is otherwise. It is settled law that who seeks equity must do equity. In my view, the respondent-plaintiff had not been able to do equity, much less, had not discharged matrimonial obligation by taking care of the ailing husband who unfortunately became incapacitated owing to the untoward accident. It is appellant-father who is looking after the son/husband. The conditions of the agreement leaves no manner of doubt that the appellant-defendant and the respondent-plaintiff had to perform their part of the contract and with assurance that the respondent-plaintiff shall take care of the ailing husband, the appellant-defendant had agreed to give the amount to the plaintiff for maintenance. Having failed to do so, I am of the view that suit for recovery was not maintainable. The intention shown by the respondent-plaintiff has not been discharged.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law

made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

All these facts have not been taken care by the Courts below and therefore, there is gross illegality and perversity. The judgments and decrees under challenge are set aside and the second appeal is allowed. The suit is consequently dismissed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

December 02, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No