IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4315 of 2014 (O&M)
Date of Decision: March 02, 2016

Karam Chand

...Appellant

Versus

Ombir

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manish Gupta, Advocate
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.10004-C of 2014

Prayer in this application is for condonation of delay of 47 days in re-filing the appeal.

It has been asserted in the application that the appeal was filed within time, thereafter certain objections were raised by the Registry and the paper-book was taken back by the Clerk of the counsel and inadvertently, the same was mixed-up with the other admitted case files. The counsel received a telephonic message from his client to know about the fate of his case, it is, at this stage, that the paper-book was traced out and after removing the objections, the same was re-filed, which has resulted in delay of 47 days in re-filing the appeal. Application is supported by the affidavit of the counsel.

For the reasons mentioned in the application, the same is allowed. Delay of 47 days in filing the appeal stands condoned.

CM No.10006-C of 2014

Counsel for the applicant-appellant has not pressed the present application.

Dismissed as not pressed.

RSA No.4315 of 2014

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Yamuna Nagar at Jagadhari, dated 07.01.2011, whereby, the suit for recovery of ₹6,00,000/- alongwith interest at the rate of 12% per annum from the date of filing of suit till realization on the basis of agreement to mortgage dated 11.01.2006, whereby an amount of ₹3,00,000/- was advanced to the appellant-defendant for payment to be made on or before 30.05.2006 at the interest fixed at 1 per cent per month and if not paid by the said date, a consolidated amount of ₹6,00,000/- to be paid by the appellant-defendant to the respondent-plaintiff, has been partly decreed to the extent for recovery of ₹3,00,000/- alongwith interest at the rate of 8% per annum from the date of agreement of mortgage dated 11.01.2006 till realization, appeal against which preferred by the appellant-defendant has been dismissed by the District Judge, Yamuna Nagar at Jagadhari, on 15.01.2014.

It is the contention of the learned counsel for the appellant that the appellant had specifically denied the execution of the agreement of mortgage dated 11.01.2006. He has even denied the signatures and has asserted that the said document, if any, was a result of fraud and misrepresentation on the part of the respondent-plaintiff. A plea was taken that there was an earlier agreement for purchase of some land with a third party which was cancelled on 11.01.2006 and probably, those papers have been used for execution of the present agreement of mortgage but the Courts below have not appreciated the said fact apart from the report of the Hand-Writing and Finger Print Expert Manish Kumar (DW-3), who has appeared on behalf of the appellant-defendant and has opined that the signatures purported to be that of the appellant appearing on agreement of mortgage dated 11.01.2006 (Ex.P-1) and receipt (Ex.P-2), do not tally with his standard signatures. He contends that no expert evidence was produced by the respondent-plaintiff to counter the report of Hand-Writing and Finger Print Expert Manish Kumar (DW-3). That apart, he contends that the veracity of the two witnesses out of three who are stated to have attested the document i.e. Narinder Singh (PW-3) and Jasvinder Singh (PW-4) respectively, cannot be relied upon as in the cross-examination, they have clearly stated that they do not know the appellant-defendant and thereafter, have proceeded to give intricate details about the appellant which indicates that their statements are not truthful and reliance, therefore, on these statements cannot be placed to conclude that the agreement of mortgage has been duly proved by the respondent-plaintiff. That apart, he asserts that as per the provision of Section 34 of the Code of Civil Procedure, interest as granted by the Courts below could not have exceeded 6% per annum from the date of decree till realization, whereas, it has been granted at the rate of 8% from the date of agreement of mortgage i.e. 11.01.2006, till the date of actual realization. He, on this basis, contends that the appeal deserves to be allowed by setting aside the impugned judgments and decree and dismissing the suit of the respondent-plaintiff.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any reason to interfere in the present appeal.

The first and foremost argument on merit as put forth by the counsel for the appellant is that the signatures on the agreement of mortgage dated 11.01.2006 (Ex.P-1) are not of the appellant-defendant as per the report of the Hand-Writing and Finger Print Expert Manish Kumar (DW-3). It is correct that the respondent has not produced any Hand-Writing and Finger Print Expert to counter the opinion as given by Manish Kumar (DW-3), however, in the light of the fact that the appellant has all through been signing differently on different documents as is apparent from the signatures on the written statement, Power of Attorney, his examination-in-chief and cross-examination, which are the part of the record, which has been summoned by this Court and perused as well, the findings recorded by the Courts below that the report of the Hand-Writing and Finger Print Expert cannot be solely relied upon, cannot be faulted with. The documents referred to above which are the part of the pleadings and the evidence clearly depict that the appellant has been signing differently on the documents. The standard signatures whichever have been taken by the Hand-Writing and Finger Print Expert, thus, cannot be made the basis for comparing with that of the agreement of mortgage dated 11.01.2006. In the light of this situation, the Courts have rightly believed and relied on the evidence of the appellant which has been produced by him in proving the documents, i.e. the statement of the respondent-plaintiff as also Narinder Singh (PW-3) and Jasvinder Singh (PW-4).

An argument has been raised that Jasvinder Singh (PW-4) is cousin brother of the respondent-plaintiff being his chacha's son (paternal father's brother's son) but that alone cannot be a ground for coming to a conclusion that he would not be a truthful witness especially when he has deposed specifically with regard to the due execution of the said document by the parties. Similar is the position with regard to Narinder Singh (PW-3) who also is a witness of the agreement. Merely because, at the opening of their cross-examination, they have stated that they do not know the appellant-defendant and have thereafter given details about him, would not be enough to doubt the veracity of these witnesses. The findings, thus recorded by this Court on consideration of the statements and the evidence brought on record, cannot be faulted with as a stray sentence cannot be relied upon which is not directly relatable to the document being sought to be proved to doubt the evidence of the witness and cannot have an overriding effect as far as actual intent and purpose of the statement. The statement of the witness has to be seen and read as a whole and thereafter, a conclusion has to be drawn thereon. The Courts have rightly proceeded to appreciate the evidence and to hold that the due execution of the agreement of mortgage dated 11.01.2006 and receipt (Ex.P-2) stands proved. There is no evidence on record which would show that the agreement is forged and fabricated document or a result of misrepresentation or fraud as has been asserted by the appellant-defendant. The findings, thus, recorded by the Courts below on this ground cannot be faulted with.

An argument has been raised and asserted by the counsel for the appellant that the interest could not have been granted beyond 6% after the date of passing of the decree, which plea again cannot be accepted in the light of the fact that the nature of the transaction as is apparent from the evidence and document although termed as a mortgage, in fact, is a commercial transaction wherein the Courts have taken care and caution to moderate the interest payable to the respondent. Going through by the terms and conditions of the agreement to mortgage, the interest as was agreed into between the parties for the period 11.01.2006 to 30.05.2006 would come to 12% per annum and thereafter, a consolidated amount of ₹6,00,000/-, i.e. double the principal amount had to be paid by the appellant-defendant to which the Courts have reduced the interest at the rate of 8% per annum from the date of agreement till its realization and that too on the principal amount of ₹3,00,000/- and therefore, this Court does not find any fault in such an approach adopted by the Courts below as it would be within the preview of Section 34 of the Civil Procedure Code.

No other point has been argued by the learned counsel for the appellant.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No other point is argued by the learned counsel for the appellant.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

CM No.10005-C of 2014

In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
March 02, 2016 **JUDGE**
Harish