

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

CR No. 1420 of 2017 (O&M)

Date of Decision: 14.11.2017

BHAJAN SINGH

-PETITIONER

VS

NAU NIDH FINANCE LTD AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Bhalla, Advocate,
for the petitioner.

Mr. Naresh Kumar Manchanda, Advocate,
for respondents No.1(i) and (iii).

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has assailed the order dated 19.01.2017 passed by Additional Civil Judge (Senior Division), Moga whereby the application for putting onus on the defendants for proving the fact regarding payment and to fix the case for evidence of the plaintiff firstly was dismissed.

[2]. Plaintiff-petitioner filed a suit for recovery of Rs.23,81,467/- including interest upto 30.06.2015 on the basis of amount deposited by the plaintiff as per passbook and writing dated 23.07.2013 issued by the defendants along with interest @ 12% per annum till final realization of the amount.

[3]. Para no.3 of the plaint reads as under:-

“That account was settled on 23.07.2013

and a sum of Rs.19,20,539/- were found outstanding against the defendants as on 23.07.2013. The defendants have duly issued a writing to this effect and photocopy of the same is enclosed. The said entry has also been duly recorded in the passbook duly maintained by the defendants.”

[4]. The defendants contested the suit. In preliminary objection No.1, payment to the tune of Rs.16,22,887/- was admitted on some explanatory basis.

[5]. Para no.1 of the preliminary objection reads as under:-

“That the suit of the plaintiff is not maintainable for the recovery of the alleged amount as plaintiff has not mentioned and have concealed the fact of receipt of payment of Rs.10,000/- by him from the defendants on 6.2.15, Rs.25,000/- on 24.3.15 from the defendants and Rs.15,87,887/- on 16.6.15 from the defendants it is submitted that plaintiff has executed the receipts in token of having received the payment mentioned above from the defendants. Original receipts executed by defendants are attached here with the written statement. It is further submitted that the plaintiff have not brought his passbook on the said dates on which the payment referred above was made to him by the defendants and this payment was made to the plaintiff on account of proximity with him but plaintiff

taking undue advantage of incomplete entries in the passbook filed the present suit without adjustment of the payments having been made to him on 6.2.15, 24.3.15 and 16.6.15 as reflected in the receipts attached herewith. Plaintiff has also agreed in writing by way of compromise on 16.6.15 that he has settled his account with the defendants for Rs.16,22,887 and that his claim has been fully satisfied and he or his family member will not claim any further amount from the defendants. This writing was made on the over leaf of receipt dated 16.6.15 and duly signed by the plaintiff after payment of the Rs.16,22,887 and as per writing mentioned above now nothing remains due towards the defendants and as such suit of the plaintiff is liable to be dismissed. Defendants has been maintaining computerized account regularly and true and correct copies of the statement of account pertaining to transaction between the plaintiffs and defendants including amount paid by defendants to the plaintiffs are attached herewith.”

[6]. In reply to para no.3 on merits, the defendants pleaded that the contents of para no.3 are matter of record and the facts pleaded in the preliminary objections be read in that context as well.

[7]. The plaintiff filed replication to the written statement and claimed the allegations raised by the defendants to be

false. The plaintiff also pleaded that son of the plaintiff namely Amandeep Singh had already opened an account with the defendants having a/c no.623 and had deposited the amount on different dates.

[8]. The defendants have got signatures of the plaintiff on blank form and receipts on a/c no.623 when the account of the son of the plaintiff was cleared in the year 2012. The allegations of tampering with the receipts and cutting in the a/c no.623 were made.

[9]. The trial Court framed the following issues:-

“1. Whether the defendants executed writing dated 23.07.2013 in favour of the plaintiff? OPP.

2. Whether the plaintiff is entitled to recover Rs.23,81,467/- with interest as prayed for? OPP.

3. Whether the suit of the plaintiff is not maintainable? OPD.

4. Whether plaintiff has concealed the material facts from the Court regarding receipt of entire payment from defendants vide receipts? OPD.

5. Relief.”

[10]. Apparently, the onus of issues no.1 and 2 was on the plaintiff whereas issue no.4 was framed in the context of alleged concealment of facts from the Court in respect of receipt of payment of entire money. The onus of this issue was fastened

upon the defendants. It is true that the onus keeps on shifting as the same is not static.

[11]. As per the admission made by the defendants in the written statement to the tune of Rs.16,22,887/-, issue no.4 would provide the stimulus to the defendants to discharge onus under issue no.4. The attempt on the part of the defendants to show the extent of payment towards complete satisfaction of the debt is inconsistent and would run counter to the case set up by the defendants. The onus of issue no.4 is on the defendants to prove that the entire loan transaction was squared off as claimed in the written statement.

[12]. The reference can be made to **Indian Chain Private Limited vs Ajit Nain and another, 2014(62) RCR (Civil) 895, Calcutta** wherein similar proposition arose for consideration of the Court and the Court after analyzing the situation observed in the following manner:-

“The attempt on part of the defendant to show that upon payment of ₹2 lacs in 2006 there has been a complete satisfaction of the debt is inconsistent and runs counter to with the case made by the defendant that the entire loan transaction was squared off in 2001. If the defendant was of the view that the entire loan has been paid off in 2001. Then there could not have been any occasion for the defendant to pay a sum of ₹2 lacs in 2006. Once the

defendants accept that they have borrowed money from the plaintiff it is for the defendants to show that the loan has been repaid. The defendants contend that there has been a novation of contract in the year 2006 and the plaintiff has received the said amount of ₹2 lacs in full and final satisfaction of its claim which means that there has been an accord and satisfaction of the debt. The defendant has not pleaded novation of contract nor accord and satisfaction. The onus lies on the defendants to show that the said sum of ₹2 lacs was paid and received by the plaintiff in full and final satisfaction of its dues. Moreover, if the defendants were clear in their mind that by reason of payment of ₹2 lacs, in the year 2006, the entire loan has been repaid, all that one would accept from a prudent businessman is to ask for return of the title deeds. On the contrary, the evidence of record would show that the defendants requested the plaintiff to give further loan on the basis of the existing security. The creation of mortgage as security for the loan of ₹20 lacs stands admitted. The evidence of the defendants appears to be that they requested for further loan on the basis of the existing security. The allegation of the defendant that interest all along has been paid in cash as directed by N.K Chitlangia and such payment has been made through one Vijay Kumar Agarwal an authorised officer of defendant no.1 is also not proved. In

Mahomed Khaleel Shirzi and sons v. Les Tenneries Lyonnaises & Anr., reported in 31 CWN 1 it is stated that when a creditor sues a debtor for the payment of a debt, if the debtor pleads payment to an agent of the creditor, it is for the debtor to prove that the other person had, or had been held out to the debtor by the creditor as having had, the authority of the creditor to receive payment of the debt on behalf of the creditor. The defendants have failed to prove payment of interest in cash or such alleged authorisation to Vijay Kumar Agarwal.”

[13]. In view of attending facts and circumstances of the case, it would be just and appropriate to set aside the impugned order and direct the trial Court either to obligate the defendants to lead evidence regarding complete satisfaction of the dues at the first instance or to make such direction after recasting necessary issues and then obligate the defendants to have a course as per the observations made by this Court in the preceding paras.

[14]. Disposed of.

14.11.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No