IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1105 of 2011 (O&M)
Date of decision : 19.09.2017

Krishna Devi and others

...Appellants

Versus

Subhash Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Katnoria, Advocate for the appellants.

Mr. Prateek Mahajan, Advocate for the respondent.

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ANIL KSHETARPAL, J. (ORAL)

Defendants are in Regular Second Appeal against the judgment passed by the First Appellate Court.

Plaintiff had filed a suit for recovery of ₹40,000/- on the basis of the negotiable instrument. The suit was filed under Order 37 CPC. Defendant No.1 had filed an application for leave to defend on the ground that her husband late Sardar Harbans Singh was not having any bank account, which was granted.

During the course of evidence, the plaintiff produced the bank memo by which cheque was dishonoured on account of insufficient funds. The plaintiff also examined the official of the bank as PW4. It was established that late Sh. Harbans Singh was maintaining an account in Punjab National Bank, Sector-17B, Chandigarh. However, suit was dismissed.

The learned First Appellate Court, after relying upon the evidence of the plaintiff i.e. Ashok Kumar as PW2, Raj Kumar as PW3 and Bhola Singh, Clerk of the Bank as PW4, had decreed the suit filed by the plaintiff while reversing the judgment of the learned trial Court.

Learned counsel for the appellants has argued that the plaintiff has failed to prove that any amount was given to Harbans Singh or he had ever taken a loan. He has further pointed out to me the certain contradictions in the statement of the plaintiff and Raj Kumar.

Cheque is a negotiable instrument. As per Section 118 of the Negotiable Instruments Act, the negotiable instrument has a presumption of consideration, date, time of acceptance, time of transfer, order of endorsement, stamp and holder is a holder in due course.

Similarly, Section 139 of the Negotiable Instruments Act, further provides a presumption in favour of the holder unless the contrary is proved that the holder of a cheque received the cheque in whole or in part of any debt or any liability.

Defendant No.1 has only appeared herself in the witness-box. She has not produced any evidence to rebut the presumption available in favour of the holder of the cheque in view of Sections 118 and 139 of the Negotiable Instruments Act.

Second argument of the learned counsel is that there are contradictions as to who wrote the details in the cheque or when the cheque was handed over. The minor contradictions are bound to happen because the witnesses were being examined after a period of six years. One should not forget that the defendant had taken a plea that her husband was not maintaining any account which has been found to be false.

In view of what has been stated above, I do not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

19.09.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**