

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

RSA No.707 of 2012 (O&M).

Date of Decision: 13.02.2017.

Ramesh Kumar and another

....Appellants.

VERSUS

M/s Dhuri Polymers and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Aman Bansal, Advocate for the appellants.

Mr. Anil Shukla, Advocate for the respondents.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellants-plaintiffs Ramesh Kumar and another (hereinafter referred to as “the plaintiffs”) impugning the judgment and decree dated 17.10.2011 passed by learned Additional District Judge, Sangrur whereby the appeal filed by the respondents-defendants-M/s Dhuri Polymers and another (hereinafter referred to as “the defendants”), challenging the judgment and decree dated 15.01.2009 passed in Case No.1358 of 23.12.2003 by learned Additional Civil Judge (Senior Division), Dhuri, decreeing the suit for recovery of Rs.38,399.96/- alongwith interest, was allowed; the judgment and decree dated 15.01.2009 was set aside; and the suit of the plaintiffs was dismissed.

A suit for recovery of Rs.42,500/- alongwith interest from the date of filing of the suit till realization was filed by Ramesh Kumar and his

Kumar alongwith Vikas Goyal and Vishal Goyal sons of Kishan Gopal were partners of firm M/s Dhuri Polymers (defendant No.1) by virtue of partnership deed dated 01.04.2002. Vikas Goyal and Vishal Goyal retired from the partnership business and a dissolution deed/retirement deed dated 31.03.2003 was executed in that regard. The firm M/s Dhuri Polymers had got sanctioned a limit/loan from Punjab National Bank, Dhuri by depositing sale deed No.1920 dated 11.08.1981 for the value of Rs.13,50,000/- in name of Ramesh Kumar (plaintiff No.1) and sale deed No.3337 dated 08.11.1983 of the value of Rs.20,58,544/- in favour of Vidya Wati (plaintiff No.2) as security with the said bank. After dissolution of the partnership business, Sanjiv Kumar (defendant No.2) agreed to get both the sale deeds released from the bank by 15.07.2003 and a writing to the said effect was executed in favour of the plaintiffs. By way of the writing, it was agreed by Sanjiv Kumar-defendant No.2 that in case he failed to get the sale deeds released by the stipulated date i.e. 15.07.2003, the plaintiffs would be entitled to claim interest from the defendants at the rate of 12% per annum on the valuation amount of the sale deeds. Since defendant No.2 got the sale deeds released only on 21.08.2003, the plaintiffs claimed that they had become entitled to recover amount of Rs.42,500/- from the defendants being interest on valuation amount of sale deeds. Refusal of the defendants to pay the interest amount necessitated filing of the suit.

The defendants contested the suit raising various preliminary objections with regard to maintainability of the suit, mis-joinder of necessary parties etc. The writing relied upon by the plaintiffs was alleged to be forged and fabricated. They added that Kamlesh Rani and Sanjiv

Kumar were also partners of M/s Dhuri Polymers and that the sale deeds

No.1920 and 3337 were deposited with the bank as security at the instance of Vikas Goyal and Vishal Goyal. During the course of business, Ramesh Kumar (plaintiff No.1) used to take signatures of other partners on blank papers and blank sheet of letter pad and it was one of those blank papers/letter pad sheet signed by the defendants in good faith that Ramesh Kumar had forged the writing and was bent upon to take undue advantage of the same.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to recover the suit amount? OPP.
2. Whether the plaintiffs are entitled to interest if so what rate and to what extent? OPP.
3. Whether the suit of the plaintiffs is not maintainable? OPD.
4. Whether the suit of the plaintiffs is bad for mis-joinder of necessary parties? OPD.
5. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court decreed the suit vide judgment and decree dated 15.01.2009.

The defendants preferred an appeal which was allowed by learned Additional District Judge, Sangrur vide judgment and decree dated 17.10.2011 and the judgment and decree dated 15.01.2009 passed by learned trial Court was set aside and the suit of the plaintiffs was dismissed.

Feeling aggrieved with the judgment and decree dated

17.10.2011 passed by learned first appellate Court, the appellants-plaintiffs filed the instant Regular Second Appeal.

The submissions made by Mr. Aman Bansal, learned counsel representing the appellants and Mr. Anil Shukla, learned counsel for the respondents have been heard and record perused.

At the very outset, learned counsel for the appellants-plaintiffs argued that learned trial Court as well as learned first appellate Court have consistently held that execution of the writing (Ex.P4) by Sanjiv Kumar (defendant No.2) is established. In other words, Ex.P4, which was alleged to be a false and forged document by the defendants, was found to be a genuine and duly executed document between the parties. Based on the contents of the document Ex.P4, the plaintiffs filed the instant suit for recovery of an amount of Rs.42,500/- being the interest amount at the rate of 12% per annum on the valuation amount of sale deeds i.e. Rs.34,08,544/- and learned trial Court held the plaintiffs entitled to recover the amount of Rs.38,399.96/- from the defendants alongwith interest at the rate of 12% per annum from the date of filing of the suit till the date of judgment and decree and future interest at the rate of 6% per annum. However, learned first appellate Court although in concurrence with the findings of learned trial Court held the writing Ex.P4 to be proved but referring to Section 25(1) of the Indian Contract Act, 1872 (for short, "the Act") held that the contract between the parties was a void contract and dismissed the suit of the plaintiffs.

Learned counsel contended that under Section 25 of the Act, an agreement without consideration between the parties, which is a promise to compensate for something done, is not a void agreement. In the instant case,

Sanjiv Kumar (defendant No.2) had agreed to get the sale deeds of the plaintiffs released from the bank by a particular date. He had also agreed to pay interest on the valuation amount of the sale deeds at the rate of 12% per annum in case he failed to get the sale deeds released from the bank by that date. When the agreement Ex.P4 was proved to be duly executed between the parties, the plaintiffs were rightly held entitled to the amount claimed by them by learned trial Court and the judgment and decree passed by learned first appellate Court deserved to be set aside.

Refuting the arguments of learned counsel for the appellants-plaintiffs, learned counsel for the respondents-defendants argued that Vikas Goyal and Vishal Goyal were none else but family members of the plaintiffs. It was at their instance that the plaintiffs had submitted the sale deeds with the bank as security for repayment of the loan taken by the firm M/s Dhuri Polymers of which Vikas Goyal and Vishal Goyal were also the partners. Moreso, the value of one of the sale deeds was only Rs.7000/- whereas the other sale deed was of Rs.30,000/-. Even if the agreement Ex.P4 is taken to be validly executed, it does not speak of payment of interest to the plaintiffs on some imaginary market valuation of the properties which were subject matter of the sale deeds. Learned counsel also contended that learned first appellate Court had rightly dismissed the suit of the plaintiffs as admittedly, the agreement Ex.P4 was without consideration and was hit by the provisions of Section 25 of the Act.

Section 25 of the Act reads as under:-

“Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by

limitation law.—*An agreement made without consideration is void, unless—*

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.”

When learned trial Court as well as leaned first appellate Court had concurrently held that the execution of the writing Ex.P4 by defendant No.2-Sanjiv Kumar is established, there appears no necessity for this Court to reopen the said factum. However, mere proof of execution of the writing Ex.P4 was not enough to hold the plaintiffs entitled to the amount claimed by them. It is validity of the writing which is a contentious issue that needs determination. Admittedly, no amount was paid by the plaintiffs to the defendants against the writing Ex.P4. It is also not a writing whereby the defendants had promised to compensate the plaintiffs for something done for them and needless to say that it was not a promise to pay a debt barred by limitation law. The writing does not spell out a word to say that the promisor had undertaken to compensate the plaintiffs for something voluntarily done by them for them as it was not the case of the plaintiffs that they were compelled to deposit the sale deeds with the bank as security by the defendants or their deposit of the sale deed with bank was an obligation on the defendants for which they were bound to compensate them.

In fact, the amount agreed to be paid was termed as interest on the valuation of the sale deeds. The recital is totally vague. When no amount was advanced, how could there be interest payable on any amount. Moreover, it was not stated that the valuation of the sale deeds would be the present market price of the properties which were subject matter of the sale deeds. There being no recital in Ex.P4 that the interest would be payable on the market valuation of the properties of the registered sale deeds, the plaintiffs could not on their own get the valuation of the properties assessed by a private person to work out the amount of interest they had become

In addition to the above, learned first appellate Court rightly observed that the plaintiffs neither pleaded nor proved that they had suffered any damage on account of 36 days' delay on part of the defendants in getting the sale deeds released from the bank. The law of torts prescribes for compensation or damage only in the case of actual loss suffered by a party or having been put to loss on account of some action or inaction on part of the opposite party. Nothing such was pleaded or proved by the plaintiffs. Thus, the agreement, being without consideration and its contents also being vague, was not a valid agreement.

Resultantly, seen from every angle, the plaintiffs are not entitled to recovery of the amount claimed by them and the appeal is dismissed.

Since the main appeal itself has been dismissed, all the accompanying applications stand disposed of.

(SNEH PRASHAR)
JUDGE

13.02.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**