

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

222

RSA-2112-2013(O&M)

Date of Decision:29.08.2017

Dharam Pal

.....Appellant

Versus

Vinod Kumar

.....Respondent

**CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.**

**Present: Mr.Hitesh Kumar Sammi, Advocate,  
for the appellant.**

**Mr.Fateh Saini, Advocate,  
for the respondent.**

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**RAMESHWAR SINGH MALIK, J.(Oral)**

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for recovery filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 31.08.2009 and first appeal of the defendant was also dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 15.01.2013, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff Vinod Kumar alleged in his plaint that in January 1998, defendant Dharam Pal borrowed a friendly loan of Rs.30,000/- from him with the promise to return the same by 31.3.2000 and defendant also gave 4 blank cheques of Punjab National Bank Lalru branch bearing No.414542, 414544, 414548 and 414546, to him

in security thereof. However, the defendant did not return the said amount to the plaintiff and in order to avoid payment of said loan amount, he filed a false suit for permanent injunction against plaintiff and his brother Satish Kumar, by leveling baseless allegations. That plaintiff requested the defendant several times to repay the said loan amount to him, but no use.

Defendant was put to notice. He appeared and filed the contesting written statement. Replication was filed by the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for Rs.40,200/- i.e. Rs.30,000/- as principal amount and Rs.10,200/- as interest on the ground of friendly cash loan given to the defendant in January 1998 promised to be repaid by 31.3.2000?OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 3. Whether plaintiff has not come to the court with clean hands?OPD*
- 4. Whether suit of the plaintiff is time barred?OPD*
- 5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
- 6. Relief.”*

With a view to substantiate his pleaded case, plaintiff brought on record his documentary as well as oral evidence. However, defendant-appellant despite having been granted more than sufficient opportunities including the last opportunity, did not come forward to lead any evidence, whatsoever, in support of his pleaded case. Defendant-appellant did not step into the witness box even as his own witness, thus, entire pleaded and proved case of the plaintiff gone completely uncontroverted and un-rebutted.

After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court decreed the suit for recovery filed by the plaintiff vide its impugned judgment and decree dated 31.08.2009. Defendant filed his first appeal which was also dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 15.01.2013. Hence, this regular second appeal, at the hands of unsuccessful defendant.

Heard learned counsel for the parties.

It is not even pleaded or argued case on behalf of the defendant-appellant that he was not granted due opportunity by the learned trial court as well as by the learned first appellate court to pursue his case as per his pleadings. Defendant-appellant did not appear even as his own witness in support of his pleaded case and that too for no good reasons. In fact, he did not lead any kind of evidence either documentary or oral for the reasons best known to him. On the other hand, plaintiff duly proved his pleaded case by leading cogent and convincing evidence, which was rightly decreed by the learned trial court.

Since, the defendant-appellant did not move even an application under Order 41 Rule 27 of the Code of Civil Procedure along with his first appeal before the learned first appellate court, his first appeal was also rightly dismissed by the learned Additional District Judge. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as the appellant is concerned, it was a case of no

evidence. No reason is forthcoming on record as to why he did not think it appropriate to lead any evidence in support of his pleadings. It is also a matter of record that the appellant issued as many as four cheques Exs.P1 to P-4 in favour of the plaintiff with a view to discharge his financial liability. Once the cogent and convincing evidence brought on record by the plaintiff in support of his pleaded case has gone completely uncontroverted and unrebutted, suit for recovery filed by the plaintiff was rightly decreed by the learned trial court and first appeal of the defendant was also rightly dismissed by the learned Additional District Judge. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent and convincing relevant findings recorded by the learned Additional District Judge in para 9 of his impugned judgment, which deserve to be noticed here, read as under:-

*PW1 Vinod Kumar respondent/plaintiff appeared in the witness box and deposed on the lines of his case as to how Rs.30,000/- were borrowed by appellant Dharam Pal from him in January 1998, with a promise to return the same on 31.3.2000. He gave four cheques Ex.P1 to Ex.P4 as a guarantee to PW1, for repayment of the said amount, in the presence of PW2 and PW3 Jain Kumar and Rakesh Kumar, respectively. Rate of interest was settled as 12% per annum. To the similar effect there are statements of witness Jain Kumar and Rakesh Kumar as PW2 and PW3 respectively, who have specifically supported and*

*corroborated the statement of respondent/plaintiff PW1 Vinod Kumar. On the other hand the appellant had taken various pleas and different stories as contained in para No.3 of this judgment, but in support thereof he did not lead even an iota of evidence, for the reasons best known to him. Admittedly, he availed four opportunities including one last opportunity before the trial court, to produce his evidence. Lastly his evidence was closed by order. Meaning thereby evidence of the respondent/plaintiff goes un rebutted and unchallenged. The appellant or his counsel have failed to extract anything, from the cross examination of witnesses of the respondent, favourable to the appellant. Non appearance of appellant in the witness box to deny case/claim of the respondent, indicates that he has admitted the averments of the plaint, in an indirect way, otherwise he would have appeared as his own witness and would have explained as to how and in what manner, fraud was committed with him by the respondent. At least, he could depose in the witness box that the amount in question was never borrowed by him from the respondent. So his pleas/stand taken in the written statement were rightly rejected by the trial court, as a result of which issues No.1 to 5 were decided in favour of respondent/plaintiff. It stands proved on record with the cogent and convincing evidence of the respondent that an amount of Rs.30,000/- was borrowed by appellant from the respondent. Interest @ 12% per annum till disposal of the suit has been allowed, which is genuine rate. Future interest has been allowed @ 6% per annum which is perfectly in accordance with law. So findings qua all the issues recorded by trial court stand affirmed. Judgment/decree under challenge have been passed by the trial court perfectly in accordance with law and they do not call for any interference of this appellate court. This appeal being devoid of any merit deserves dismissal.”*

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

August 29, 2017  
seema

(**RAMESHWAR SINGH MALIK**)  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No

**CM-5710-C-2013 in  
RSA-2112-2013**

**Dharam Pal**

**Versus**

**Vinod Kumar**

Present: Mr.Hitesh Kumar Sammi, Advocate,  
for the applicant-appellant.

Mr.Fateh Saini, Advocate,  
for the respondent.

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Applicant seeks condonation of delay of 11 days in re-filing the  
appeal.

After hearing the learned counsel for the parties, instant  
application is allowed, for the reasons stated therein. Delay of 11 days in  
re-filing the appeal is condoned.

C.M. stands disposed of.

August 29, 2017  
seema

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**