

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.161 of 2015 (O&M)

Date of Decision:22.02.2017

Gurmeet Singh

.....Appellant

Versus

Satish Kumar Garg

.....Respondent

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

Present: Mr.M.S.Uppal, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned judgment and decree dated 30.07.2014 passed by the learned first appellate Court, whereby first appeal was dismissed and the impugned judgment and decree dated 21.12.2013 of the learned trial Court, decreeing the suit of the plaintiff for recovery, were upheld, unsuccessful defendant has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that initially, the plaintiff (now respondent) filed the suit for recovery of ₹60,625/- (rupees sixty thousand six hundred twenty five), which was, however, amended during pendency of the suit. The brief facts of the case of the respondent-plaintiff as is made out from the amended plaint were that the defendant (now appellant) borrowed ₹40,000/- (rupees forty thousand) from the respondent-plaintiff on 06.09.2005 on interest at the rate of 1.25% per month. To repay

the said loan, the appellant-defendant issued cheque No.592472 dated 10.03.2006 of the amount of ₹43,000/- (rupees forty three thousand) being the principal and interest amount drawn at his bank account No. 17115 of Punjab National Bank, Branch Mansa. To realize the amount, the respondent-plaintiff presented the said Cheque in State Bank of Patiala, Main Branch, Mansa on 11.03.2006 and the cheque was forwarded to the banker of the appellant-defendant for realization of the amount but the banker of the appellant-defendant returned the cheque without encashment with the objection that the appellant-defendant had closed his bank account on 11.03.2006, as such, the cheque was returned unpaid. After receipt of the cheque having been dishonoured, the respondent-plaintiff served notice dated 18.03.2006 on the appellant-defendant by registered post to make payment of the cheque amount within 15 days from the receipt of notice. But despite of receipt of notice, the appellant-defendant failed to make payment of the cheque. The respondent-plaintiff thereafter filed a complaint under Section 138 of the Negotiable Instruments Act which is now pending for 28.03.2009 (however, later on the said complaint was disposed of). As per version of the respondent-plaintiff, he is maintaining his personal account books regularly and in due course, balance is struck in the evening. According to respondent-plaintiff, he made the entry in his account books at that moment with regard to borrowing of ₹40,000/- (rupees forty thousand) by the appellant-defendant from him on 06.09.2005. Copies of the relevant entries were attached with the plaint and original account books were produced for inspection of the Court. The respondent-plaintiff claimed that he is entitled to recover ₹40,000/- (rupees forty thousand) from the appellant-defendant along with interest at the rate of

1.25% per month i.e. ₹20,625/- (rupees twenty thousand six hundred twenty five). The respondent-plaintiff requested the appellant-defendant many a times to repay the aforesaid amount, but the appellant-defendant put off the matter on one pretext or the other. The respondent-plaintiff further pleaded that he has the cause of action to file the present suit firstly on 06.09.2005 when the appellant-defendant borrowed ₹40,000/- (rupees forty thousand) from him; on 10.03.2006 when the appellant-defendant issued the cheque to the respondent-plaintiff; on 11.03.2006 when the cheque was dishonoured and on 18.03.2006 when notice was served. With these averments, the respondent-plaintiff prayed to decree the suit.

Having been served in the suit, defendant put appearance and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. After completion of pleadings of the parties, learned trial Court framed the following issues:-

- 1) *Whether the defendant borrowed an amount of ₹40,000/- from the plaintiff on 06.09.2005 on interest and for payment of this amount, he issued cheque No. 592472 dated 10.03.2000(sic) but the same was dishonoured? OPP*
- 2) *If issue No.1 is proved, plaintiff is entitled to recover ₹40,000/- along with interest? OPP*
- 3) *Whether plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 4) *Whether suit is not maintainable? OPD*
- 5) *Whether suit is within limitation? OPP*
- 6) *Whether plaintiff is doing the business of money lender? OPD*
- 7) *Relief."*

In order to prove their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly,

suit of the plaintiff was decreed vide impugned judgment and decree dated 21.12.2013. Dis-satisfied, defendant filed his first appeal which also came to be dismissed by the learned District Judge vide impugned judgment and decree dated 30.07.2014. Hence, this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that defendant-appellant issued cheque No.592472 dated 10.03.2006 in favour of the plaintiff for an amount of ₹43,000/-, drawn at his Bank A/c No.17115 of Punjab National Bank, Mansa Branch. When this cheque was presented by the plaintiff, it was dishonoured. Thus, statutory presumption goes against the defendant-appellant. The cheque was proved on record by the plaintiff as Ex.P1, memo of cheque was proved as ExP2 dated 11.03.2006, notice dated 18.03.2006 was proved as Ex.P3, postal receipt was proved as Ex.P4, registered A.D. as Ex.P5, envelope as Ex.P6, certificate from PNB as Ex.P7, cheque return register as Ex.P8, statement of account of defendant as Ex.P9, statement of account of plaintiff-Satish Kumar as Ex.P10 and copies of entries of account-books as Exs. P12 to Ex.P20. Defendant-appellant has admitted his signatures on the cheque. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is also a matter of record that the plaintiff-respondent filed a complaint under Section 138 of the Negotiable Instruments Act (for short “the N.I.Act”) and the same was dismissed by the learned Additional Chief Judicial Magistrate, Mansa, on 14.12.2009. It is the settled proposition of

law that nature and standard of proof of evidence in the civil and criminal proceedings is not the same. In the criminal case, the prosecution is to prove its case beyond reasonable doubt. However, in the civil proceedings, the standard of proof is entirely different and distinct. The standard of proof, in civil proceedings, is not as strict as required in the criminal case.

It is so said because the civil proceedings are to be decided on the basis of probabilities, whereas in the criminal case, prosecution is always under legal obligation to prove its case to the hilt. Under these circumstances, mere dismissal of complaint of the plaintiff under Section 138 of the N.I.Act will neither dis-entitle the plaintiff from recovering the amount nor the defendant would be absolved from his liability. In this view of the matter, it can be safely concluded 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.

The abovesaid view taken by this Court also finds support from the following judgments:-

(i) *M/s Preet Cold Storage and Ice Factory and another Versus M/s United Commercial Bank and others 1989 (1) PLR, page 180;*

(ii) *Durgamani Behera and others Versus Ghasiram Mohanta and others, 1996 (1) Civil Court Cases, page 443 and*

(iii) *Ashwani Kumar Versus State of Punjab, 2002(3) R.C.R. (Criminal), page 450.*

The learned first appellate Court, before arriving at a judicious conclusion re-considered and re-appreciated facts of the case as well as the evidence available on record, in the correct perspective. Relevant observations made by the learned District Judge in para 18 of his impugned

judgment, which deserve to be noticed here, read as under:-

“The appellant-defendant has admitted his signatures on the cheque itself. He is an educated person. He is supposed to know the complications of signing on a blank paper or a blank cheque. The respondent-plaintiff had not claimed the suit amount on the basis of cheque or entries in the account books only. Entries in the account books are more or less corroboratory in nature. The original suit of the respondent-plaintiff is well within limitation and subsequent amended plaint has to be treated within limitation. It is pleaded fact of the appellant-defendant that he took loan of Rs.9000/- (rupees nine thousand) from the respondent-plaintiff for 100 days and after payment of Rs.100/- (rupees one hundred) per day, the said amount was cleared. According to evidence of appellant-defendant as DW2, he had given the cheque as a security but the respondent-plaintiff did not return the said cheque to the appellant-defendant. Even there was no amount due towards the appellant-defendant and when the appellant-defendant demanded back the blank cheque, the respondent-plaintiff told that he destroyed the same and the appellant-defendant was not to worry about it. The perusal of the findings of the learned lower Court reveals that the learned lower Court has minutely and meticulously evaluated the evidence in detail and thereafter returned the findings on all the issues. Merely if the learned lower Court has taken up certain issues jointly, that would not amount to injustice to either side. The important point is that the learned lower Court has given specific findings on each issues though the same were decided jointly.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned Courts below. He also could not 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. Learned Courts below have recorded concurrent findings of facts, which have been found based on sound reasons. 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 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 instant regular second appeal stands dismissed, however, with no order as to costs.

February 22, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

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