

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

**RSA No. 1263 of 2014 (O&M)
Date of Decision: 15.5.2017**

M/s K.M. Rice & General Mills and another

.....Appellants

Vs.

Dalip Singh (deceased) through LR

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.S.K. Arora, Advocate
for the appellants.

Mr. N.S.Sodhi, Advocate
for the respondent.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for recovery filed by plaintiff-respondent was decreed by the learned trial court vide its impugned judgment and decree dated 10.12.2011 and the first appeal of the defendants was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 22.10.2013.

Brief facts of the case, as noticed by the learned trial court in para 1 of its impugned judgment, are that it is the case of plaintiff-Dalip Singh son of Chanan Singh that defendant No.2-Hari Om Parkash was partner of defendant No.1, i.e. M/s K.M. Rice & General Mills, Ferozepur

Road, Moga and he was actively engaged in all the affairs and dealings of defendant No.1. He further pleaded that, for the business purpose, defendant No.1, through its partner defendant No.2, borrowed ₹2,00,000/- from plaintiff on 24.3.2002 and ₹50,000/- on 1.12.2001 on interest @ 2% per month and executed two writings, on the same date on the letter pad of defendant firm, but failed to make payment of the same either of principal sum or interest to the plaintiff, despite repeated demands and reminders.

Upon service, defendants put appearance and filed their contesting written statement, taking more than one preliminary objections. 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 to recover the suit amount on the basis of writing/ruqa dated 1.12.2001 and 24.3.2002?OPP*
- 2. Whether the plaintiff is entitled to interest, if so, at what rate?OPD*
- 3. Whether the receipt-ruqa in question are forged and fabricated one?OPD*
- 4. Whether plaintiff is a money lender?OPD*
- 5. Whether suit of the plaintiff is barred by time?OPD*
- 6. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, instead of decreeing the suit in toto for an amount of ₹3,31,500/-, the learned trial court partly decreed the suit for an amount of

₹2,50,000/- along with interest, vide its impugned judgment and decree dated 10.12.2011. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 22.10.2013. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the parties.

While issuing notice of motion vide order dated 19.9.2014, following order was passed by this Court:-

“Learned counsel for the appellants submits that there are bright chances of compromise in the present case. He further contends that to show their bonafide, the appellants are ready to deposit the principal amount, i.e. ₹2,50,000/-, as decreed by the learned Trial Court.

Notice of motion for 17.11.2014, for compromise.

In the meantime, the appellants shall deposit ₹2,50,000/- within one month from today, before the learned Trial Court to show their bonafide. However, the said amount shall not be disbursed till further orders.”

It has gone undisputed that the abovesaid order passed by this Court was not complied with by the defendants-appellants. They did not deposit any amount, as undertaken on their behalf at the time of issuing notice of motion on 19.9.2014.

Learned counsel for the appellants submits that during the pendency of the present appeal, plaintiff filed his execution and the same has been satisfied, as the decretal amount stands paid by the appellants to the respondent-plaintiff.

During the course of hearing, learned counsel for the appellants could not address any meaningful argument in favour of the appellants, with a view to challenge the concurrent findings of facts recorded by both the learned courts below. In fact, since the plaintiff-respondent has proved his pleaded case by leading cogent and convincing evidence, hardly there was any argument available to learned counsel for the appellants. Despite making his best efforts, learned counsel for the appellants could not improve the case of the appellants before this Court and rightly so, because there was no scope for the same. This seems to be the reason that appellants did not comply with the abovesaid order dated 19.9.2014. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

A bare perusal of the impugned judgments passed by the learned courts below would show that although the defendants-appellants sought to raise the plea of fraud, alleging that Ex.P-1 and Ex. P-2 were forged and fabricated documents, yet they failed to prove their pleaded case, by leading any relevant evidence in this regard. On the other hand, plaintiff-respondent has duly proved his case, as per his pleadings. Under these peculiar facts and circumstances, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned first appellate court examined, considered and appreciated true facts of the case as well as evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 16 and 17 of its

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

“On the other hand, there is bald statement of Hari Om Parkash defendant-respondent. During cross examination, he admits that defendant No.1 is a partnership concerned and he is active partner of it. He has further admitted that defendant firm has a bank account, which is being operated by him alone. He has admitted that Dalip Singh plaintiff-respondent had filed a case under Negotiable Instruments Act in which he has been convicted. It shows that he had money transaction with plaintiff-respondent and now has come up with a false story stating that documents Ex.P1 and Ex.P2 are forged and fabricated one. He has further admitted that in aforesaid case he had to pay Rs. 2 Lacs to Dalip Singh plaintiff-respondent during appeal preferred by him before Hon’ble High Court. When he was caught on wrong foot then he had stated evading replies to material questions saying that he does not remember. He has admitted in his cross-examination on page No.4 that writings Ex.P1 and Ex.P2 appear to have been bearing his signatures.

In the light of above situation, contention of learned counsel for appellants-defendants that documents Ex.P1 and Ex.P2 are forged and fabricated documents or same have not been duly proved, is found to be false and devoid of merits.”

It also goes without saying that whenever any party to the litigation seeks to raise the plea of fraud, a heavier onus would be on the said party to prove the plea of fraud, by leading cogent and convincing evidence. However, in the present case, defendants-appellants miserably failed to discharge their onus to prove the plea of fraud raised by them under issue No.3. In such a situation, appellants were bound to fail. That is what has

been held by both the learned courts below, while recording their concurrent findings of facts and the impugned judgments deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85** and judgments of this Court in **Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017.**

Further, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered 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 a 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 law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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

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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 abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

15.5.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No