

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5644 of 2015

Date of decision:4.8.2017

M/s Dhillon Brothers Mundian Wale Anaj Mandi, Chamakaur Sahib and
others

...Appellants

Versus

Smt.Paramjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Pritam Singh Saini, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved 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 19.9.2014, which was upheld by the learned first appellate court, vide its impugned judgment and decree dated 19.5.2015, unsuccessful defendants have approached this Court by way of present 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 the plaintiff sought to recover of Rs.5,75,000/- with interest till from the defendants as per receipts dated 22.12.2001, 1.4.2002, 1.7.2001 and 1.5.2002 executed by defendant in her favour. The controversy between the parties is summarised. The

plaintiff and defendants were residents of village Mundian. Defendants No. 2 and 3 were partners of M/s Dhillon Brothers, defendant No. 4 was Manager of the Firm. The mother-in-law of plaintiff was allotted 10 acres of land in village Nabhipur in lieu of the death of her father-in-law of the plaintiff, who was killed in 1971 war. Mother-in-law of the plaintiff sold the land to Charan Singh of village Nabhipur Tehsil Kharar Distt. Ropar. The money received from the land was equally divided between the husband of plaintiff and his younger brother Avtar Singh Sidhu. They further advanced some amount to defendants for using the same in the business of commission agency in Anaj Mandi Chamkaur Sahib. The plaintiff gave Rs.5,75,000/- for which, the receipts were duly executed by defendants. Avtar Singh Sidhu gave Rs. 5,25,000 for which they issued a cheque and the same was dishonored. The defendants agreed to pay 2% interest to the plaintiff as they were running commission agency in Chamkaur Sahib. The plaintiff requested the defendants several times to return of the amount to her but to no effect.

Defendants were put to notice. Defendants No.1, 3 and 4 did not appear despite service and they were proceeded against ex parte. However, defendant No.2 appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed her replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff entitled to relief of recovery amount of Rs. 5,75,000 including interest as prayed for?OPP
2. Whether suit of the plaintiff not not maintainable against the

defendant no 2 as alleged?OPD

3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties as alleged?OPD
4. Whether the suit is not within time?OPD
5. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved her case, by leading cogent and convincing evidence. Accordingly, suit filed by the plaintiff for recovery of Rs.5.75 lacs along with interest was decreed by the learned trial court, vide its impugned judgment and decree dated 19.9.2014. 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 19.5.2015. Hence, this regular second appeal, at the hands of the unsuccessful defendants.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that concurrent findings of facts have been rightly recorded, which deserve to be upheld. It was specifically pleaded and proved case on behalf of the plaintiff that the amount in question was advanced by the plaintiff to the defendants for using the said amount for the business of commission agency of the defendants-appellants. In token of receipts for the amount advanced

by the plaintiff, defendants executed more than one receipts Ex.P1 to Ex.P4 in favour of the plaintiff-respondent.

It seems that the defendants/appellants were trying to play smart with the plaintiff-respondent as well as with the courts so as to avoid their financial liability. Defendants-appellants sought to raise every possible technical and super-technical objections, trying to avoid substance of the matter against them. However, both the learned courts below proceeded on a well reasoned approach, while decreeing the suit of the plaintiff so as to do substantial justice between the parties. Having said, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Conduct of the parties to the litigation is also one of the relevant considerations to arrive at a judicious conclusion. In this regard, relevant observations made by the Hon'ble Supreme Court in **Kishore Samrite Versus State of U.P. and others, 2013(2) SCC 398**, which aptly apply to the facts of the present case and can be gainfully followed, read as under:-

“With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth

should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

*The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : **Tilokchand H.B. Motichand & Ors. v. Munshi & Anr., [1969(1) SCC 110]**; **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr., 2012(3) R.C.R.(Civil) 1 : 2012(3) Recent Apex Judgments (R.A.J.) 56 : (2012)6 SCC 430**; **Chandra Shashi v. Anil Kumar***

Verma, 1995(1) R.C.R.(Criminal) 210 : (1995) SCC (1) 421; Abhyudya Sanstha v. Union of India & Ors., 2012(1) S.C.T. 641 : (2011)6 SCC 145; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr., 2011(5) R.C.R.(Civil) 397 : (2011) 7 SCC 639; Kalyaneshwari v. Union of India & Anr., 2012(2) R.C.R.(Civil) 626 : 2012(2) Recent Apex Judgments (R.A.J.) 242 : 2012 (2) S.C.T. 551 : (2011)3 SCC 287).

The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi- fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletioem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

*No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {**K.D. Sharma v. Steel Authority of India Ltd. & Ors., [(2008)12 SCC 481].**}*

It has also gone undisputed on record that family of the

appellants owns three firms namely M/s Dhillon Rice & General Mills at

village Mundia, M/s Dhillon Brothers at Chamakaur Sahib and third firm was known as M/s Dhillon Trading Corporation. This fact was admitted by Avtar Singh-defendant No.2 during his cross-examination when he appeared as DW-2. Further, cross-examination of PW-2 Charanjit Singh also clearly reveals that the receipts, Ex.P1 to Ex.P4, were never objected to on any ground including any technical ground of non-affixation of adequate stamp duty/revenue stamps thereon. Once those receipts were admitted in evidence without having raised any objection to their admissibility in evidence at the instance of the defendants-appellants, no such objection could have been entertained at a later point of time.

It is so said because defendants-appellants had an occasion to cross-examine the witness of the plaintiff PW-2 Charanjit Singh in this regard. It is also pertinent to note here that defendant-appellant No.2 Avtar Singh admitted that he was present at the time of advancing of the disputed amount by the plaintiff to the defendants' Firm. Under these undisputed facts and circumstances of the case, it can be safely concluded that plaintiff has duly proved her case for recovery of the suit amount. She was rightly held entitled for the relief claimed by way of her suit for recovery against the defendants-appellants. Thus, the impugned judgments rendered by both the learned courts below deserve to be upheld, for this reason also.

Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in paras 12 and 13 of its impugned judgment,

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

“It is claimed by the plaintiff that the amount of Rs. 5,75,000 was advanced to the defendants for using the same in their business of commission agency. Receipts Ex. P1 to Ex. P4 were executed by defendants in favour of plaintiff. The demand was raised by the plaintiff for the return of the amount but the defendants refused to return the amount. Avtar Singh claimed that he is not partner of M/S Dhillon Brothers and never received any amount. Charnjit Singh was the attesting witness of the receipt. No evidence lead by the appellants to prove that Avtar Singh was not partner of M/S Dhillon brothers. He appended his signatures on receipts Ex. P1 and Ex. P2 being partner of the M/S Dhillon brothers. During cross examination, defendant Avtar Singh himself admitted that there family owns three firms namely M/S Dhillon rise & General mills at village Mundia, M/S Dhillon brothers at Chamkaur Sahib and third Dhillon Trading corporation. He further admitted that M/S Dhillon rise & Gen. Mills is a partnership firm and deed in this regard executed and the same is in his possession. He further admitted that firm has been got registered from Registrar of firms and societies after execution of partnership. The main person of the firm M/S Dhillon Brother is Bahadur Singh and he is uncle of defendant no 2. It is well settled that admission by a party, oral or documentary in the court is deemed to be the best peace of evidence. Admission in evidence is admissible under section 58 of the evidence Act and it stands on a higher footing then evidencery admission. The admissions are fully binding on the party that make them and constitute and waver of proof and they can be made the foundation of the rise of the parties. In case Avtar Singh Vs. Durdial Singh (2006 12 SCC 552), the Hon'ble Supreme Court of India held that things admitted need to be proved then the same are perse admissible. Avtar Singh through claimed that he did not borrow any amount and never issued any receipt. The plaintiff in connivance with Avtar Singh

Sidhu filed a false and fabricated suit. He stated that the firm came into existence in 1988-89. no cheque was advanced till today. It is also claimed that the plaintiff/respondent could not show the source from where she arranged the amount. Ex. DA i.e. Written statement filed in civil suit no. 537/8.12.2003 placed on record. On the other hand plaintiff examined PW2 Charanjit Singh being attesting witness of the receipt. No money was advanced by the plaintiff to defendants firm. The plaintiff has forged and fabricated the signatures of defendant Avtar Singh on receipt Ex. P1 and Ex. P2. But no hand writing and fingerprint expert was examined by the defendant to prove the assertion. Sh. Kulbir singh Ld. Counsel for the appellant has contended that the plaintiff was running money landing business and for which the license was required.

I have considered this contention of the ld. Counsel for the appellant and find no force in it. There is no evidence to prove that the plaintiff is money lander. One or two causal advancement cannot be termed to fall within the ambit of term of money leading. The amount can be advanced by any person of different dates and that would not be suffice to infer that the person is money lander. Receipts Ex. P1 and Ex. P2 bears the signatures of Avtar Singh. The evidence lad by the plaintiff to prove that the amount of Rs. 5,75,000 was advanced by her to the defendant. Though the plaintiff/respondent has rightly been held to recover the suit amount along with interest. Being so, I find no reason to interfere in the judgment passed by the Lower Court. The lower court has rightly decreed the suit of the plaintiff and there is no ambiguity in the judgment under appeal and the findings of the learned lower court on the issues are well reasoned and are upheld.”

Sum and substance of the argued case of the appellants was that

they were trying to defeat the genuine claim of the plaintiff, having turned dishonest, while not repaying the amount in question received by the

defendants from the plaintiff. They started raising one or the other objections based on technicalities. It is the settled proposition of law that technicalities cannot be permitted to stand in a way of doing substantial justice between the parties. The concurrent findings of facts recorded by both the learned courts below, which have been found based on sound reasons, cannot be reversed, at the hands of this Court only because of technicalities.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Pratibha Singh and another Vs. Shanti Devi Prasad and another, 2003 (2) SCC 330 (SC), H.K.K. Bail and another Vs. M/s Cyma Exports Pvt. Ltd. and another, 2011 (15) SCC 370 (SC), Dr. K.P. Ranga Rao Vs. K.V. Venkatesham and others, 2015 (1) RCR (Civil) 301 (SC), Mehar Singh and another Vs. Kasturi Ram and others, 1962 AIR (Punjab) 394 (P&H) and M/s Dashmesh Rice Mills and others Vs. M/s Govind Ram Anil Kumar, 2003 (3) RCR (Civil) 734 (P&H) and CR No.2703 of 2017 (Dhup Dass Chela Kishan Dass Chela Chetan Dass Vs. Sajjana @ Sampat) decided on 19.4.2017.**

During the course of hearing, learned counsel for the appellants 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. Both the impugned judgments and

decrees have been found based on cogent findings recorded by the learned Courts below and the same deserve to be upheld, for this reason also. 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.

4.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No