

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

**RSA No.1211 of 2017
Date of decision:3.3.2017**

Gurmej Singh

...Appellant

Versus

Parnam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ranjit Saini, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant regular second appeal, at the hands of unsuccessful defendant, is directed against the impugned judgment and decree dated 4.8.2016 passed by the learned District Judge, whereby first appeal of defendant was dismissed and the judgment and decree dated 12.2.2014 passed by the learned trial Court, decreeing the suit of the plaintiff for recovery, were upheld.

Succinctly put, facts necessary for decision of the present appeal, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff-Parnam Singh had filed a suit for recovery of Rs.6,00,000/- against Gurmej Singh-defendant, on the averments that earlier he filed a suit against defendant for mandatory injunction directing the defendant to execute sale deed of his property bearing Khasra No.43/18/2, 19/2, 22/3 measuring 6 marlas consisting of two rooms and one shop, situated at village Kamboj, Chowk Khairabad, Abadi Sunder Nagar, Amritsar, in his favour as per agreement dated 30.12.1998, after having received a sum of Rs.3,00,000/-. During the pendency of that

civil suit, a compromise was effected between the parties and as per

compromise, plaintiff agreed to withdraw the said civil suit and the defendant agreed to pay a sum of Rs.6,00,000/- to the plaintiff. In pursuance to said compromise, the defendant issued a cheque bearing No.1014665 of dated 10.11.2004 for Rs.6,00,000/- in favour of the plaintiff and requested the plaintiff to withdraw the pending suit, however, the plaintiff asked the defendant that he would withdraw the suit after clearance of the cheque. Thereafter, as per instructions of the defendant, plaintiff presented the aforesaid cheque for its clearance on 02.04.2005 (sic 02.05.2005) but the same was dishonoured by the banker of defendant vide memo dated 05.05.2005 with remarks "Account closed". Then after adopting due procedure, plaintiff filed a complaint under section 138 of Negotiable Instruments Act against the defendant on 11.06.2005 and also withdrew the civil suit on 05.02.2006. Vide judgment dated 22.01.2008 the defendant was convicted and sentenced by the court of Shri Ajaib Singh, the then Judicial Magistrate Ist Class, Amritsar. Defendant also preferred an appeal against the judgement of his conviction and sentence before the appellate court. According to the plaintiff, he requested the defendant many a times to pay the amount of cheque in question to him but to no effect. Hence, he filed the present suit seeking recovery of aforesaid amount of Rs.6,00,000/- alongwith pendente lite and future interest from the defendant.

Having been served in the suit filed by the plaintiff, defendant appeared and filed his contesting written statement, raising more than one preliminary objections.

On completion of pleadings of parties, learned trial court framed the following issues:-

- 1) Whether the plaintiff is entitled to recover the amount of

Rs.6,00,000/- from the defendant alongwith interest at the rate of 18% per annum? OPP.

2) Whether the plaintiff has filed the present suit within the period of limitation? OPP.

3) Whether the present suit is not maintainable? OPD.

4) Whether the plaintiff has no locus standi to file the present suit? OPD

5) Relief.

In order to prove their respective stands taken, both the parties led their oral as well as documentary 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. Accordingly, the suit for recovery of Rs.6 lacs along with interest @ 8% per annum from the date of accrual till the date of decree and with future interest @ 6% per annum was decreed vide impugned judgment and decree dated 12.2.2014. Dissatisfied, defendant filed his first appeal, which also came be dismissed by learned first appellate court vide impugned judgment and decree dated 4.8.2016. Hence this regular second appeal at the hands of the unsuccessful defendant.

Heard learned counsel for the appellant.

A bare reading of both the impugned judgments and decrees would show that plaintiff has duly proved his case, by leading cogent and convincing evidence. It is a matter of record that plaintiff-respondent herein filed his earlier suit for mandatory injunction on the basis of agreement to sell dated 30.12.1998. Said suit was withdrawn on the basis of compromise between the parties. Plaintiff suffered his statement before the court that

defendant handed over to the plaintiff a cheque bearing No.1014655 for Rs.6 lacs and because of that reason, plaintiff did not want to proceed further with his suit. Accordingly, the suit was dismissed as withdrawn, on the basis of compromise. Plaintiff presented the said cheque in the bank but it was dishonoured, which led to filing the complaint by the plaintiff under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act' for short). Defendant-appellant was convicted by the learned court of competent jurisdiction, however, later on he was acquitted by the appellate court.

The entire case of the defendant-appellant is that once he has been acquitted by the learned appellate court of the offence under Section 138 of the NI Act, present suit for recovery should also have failed. However, this sole argument raised on behalf of the appellant has been duly considered and found devoid of any merit. It is so said because standard of proof in the criminal and civil litigation is entirely different. To bring home the criminal charges against the accused, the prosecution is bound to prove its case beyond reasonable shadow of doubt, whereas in the cases of civil nature, the matter is to be decided on the basis of preponderance of evidence and probabilities. Plaintiff has duly proved his case, by leading cogent and convincing evidence. The cheque in question has been proved by PW3/3. Defendant-appellant did not deny his signature on the cheque, which was an account payee cheque. Thus, statutory presumption was against the defendant and in favour of plaintiff. Under these undisputed facts and circumstances obtaining on record of the present case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the

same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **K.N.Beena Vs. Muniyappan, 2001 (8) SCC 458, Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 and C.Keshavamurthy Vs. H.K.Abdul Zabbar, 2013 (4) RCR (Civil) 15** and judgments of this Court in **Mst. Biro Vs. Dulla Singh, 1961 AIR (Punjab) 175, 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 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017.**

Learned first appellate court re-considered and re-appreciated the facts and evidence available on record, before recording its own cogent findings. Relevant findings recorded by learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“After considering the rival submissions, I am of the view that as per case of the plaintiff, earlier he filed a civil suit against defendant Gurmej Singh for mandatory injunction on the basis of agreement to sell dated 30.12.1998. In such civil suit, plaintiff Parnam Singh made statement Ex.D1 withdrawing the suit. The translation of his such statement which was recorded in Punjabi, is a under:-

“Stated that I have effected a compromise with the defendant. 7 The defendant has handed over to me a cheque bearing No.1014665 for Rs.6,00,000/-. So, I do not want to proceed with the suit and the same may be

dismissed.”

Thereafter, order Ex.D2 was passed by the court on 05.02.2006. The order is reproduced as under:-

“In view of the statement suffered by the plaintiff, the suit is dismissed as withdrawn being compromised. File be consigned to the Record Room.”

The order Ex.D2 was passed in the presence of counsel for the parties. The plaintiff has given the number of the cheque in his statement made in the court in the earlier suit. The copy of the cheque is proved as Ex.PW3/3. Defendant did not deny his signatures on the cheque. It is an account payee cheque. If he signed on the backside of the account payee cheque, it does not make any difference. In his cross-examination, defendant admitted that title deed of his house was in possession of the plaintiff. He would have never delivered the original title deed of his house to the plaintiff had there been not any transaction in between the parties. It can be safely concluded that during pendency of certain litigation, he handed over the cheque Ex.PW3/3 to the plaintiff. Plaintiff presented the said cheque for encashment which was dishonoured and then he filed a complaint under section 138 of Negotiable Instruments Act against the defendant in which the defendant was convicted by the court of Shri Ajaib Singh, the then Judicial Magistrate Ist Class, Amritsar. Although the defendant was acquitted by the appellate court of the offence under section 138 of Negotiable Instruments Act, but then the 8 present case is a case of civil nature which is to be decided by preponderance of probabilities and the burden of proof does not remain fixed in such type of cases unlike a criminal case where onus to prove guilt of the accused is stationary on the prosecution and it never shifts, and furthermore documentary evidence is best type of evidence taking precedent over the oral evidence which can easily be procured. Once the cheque Ex.PW3/3 was issued by the defendant in favour of plaintiff on the basis of which compromise was effected and the plaintiff had withdrawn the

earlier suit and the order regarding withdrawal of suit on the basis of such compromise was passed in the presence of counsel for the parties, and the defendant has never assailed the said order, now it does not lie in the mouth of defendant that he never effected any compromise with the plaintiff and never agreed to pay a sum of Rs.6,00,000/- to the plaintiff. Proper explanation has been furnished by the plaintiff as to how the cheque came in his possession. Thus, the trial court is justified in holding that plaintiff is entitled for recovery of Rs.6,00,000/- alongwith interest and costs, as mentioned above.”

The case of the defendant-appellant was based on technicalities alone. Neither he has any case on facts nor in law. So far as evidence is concerned, it was only his self-serving statement as DW-1 and nothing else. Although, defendant-appellant alleged forgery and fabrication against the plaintiff, yet the appellant did not make even an effort to substantiate his plea of fraud for which a heavy onus was on him . Under the given fact situation, noticed in the foregoing paragraphs and respectfully following the law laid down by the Hon’ble Supreme Court as well as this Court in the cases referred to hereinabove, it is unhesitatingly held that the learned courts below were well within their jurisdiction to record their concurrent findings of facts and the impugned judgments and decrees passed by the learned courts below deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any jurisdictional error or patent illegality in either of the impugned judgments and decrees passed by the learned courts below. He also could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*.

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 instant regular second appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

3.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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