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

**RSA No. 4838 of 2014 (O&M)
Date of Decision: 31.7.2017**

Varinder Madaan

.....Appellant

Vs.

SBI Cards & Payment Services Pvt. Ltd

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Vivek K. Thakur, Advocate
for the appellant.

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RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration and permanent injunction was dismissed.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that that the plaintiff was a consumer of the defendant and was holder of Credit Card No.0004006676017805725. He was also having Saving Account with State Bank of India bearing No.0004006676012675883. He had availed some services through abovesaid Credit Card of the defendant. The defendant used to send bills of Credit Card to the plaintiff and every time the bill of defendant was disputed and extra charges were used to be levelled against the plaintiff regarding which he used to make complaints to the defendant at its various offices. The defendant came into compromise with the plaintiff and raised a demand of ₹35,000/- vide letter dated 21.02.2008 against full and final settlement of the said Credit Card Account. He was also given liberty to pay the amount in installments by the defendant. As demanded by the defendant, the plaintiff had paid ₹35,000/- to the defendant in different installments which were duly acknowledged and received by the defendant. He requested the defendant several times to issue Zero Balance Statement of Credit Card, but the defendant did not accept his genuine request. But, he was astonished to receive a letter dated 03.09.2010 from the defendant for demand of another sum of ₹24,978/- for settlement of account.

It was case of the plaintiff that earlier defendant had raised a demand of ₹35,000/- vide abovesaid letter dated 21.02.2008 as full and final settlement of account which the plaintiff paid to the defendant in installments. Further reference was also made to the endorsement regarding No Due Payment made by the authorized signatory of the defendant on the back of the final receipt issued by the defendant regarding deposit of final installment vide receipt dated 30.09.2008. The abovesaid demand raised by the defendant vide letter dated 03.09.2010 was stated to be illegal and not admissible in the eye of law since he was not having any existing liability towards the defendant. He requested the defendant many times not to demand such amount from him or to make any kind of recovery of said amount through his agents, servants etc. to which he refused.

Defendant was served but failed to appear before the learned trial court to contest the suit. Accordingly, defendant was proceeded against ex parte vide order dated 23.4.2011. Plaintiff produced his ex parte evidence.

After hearing learned counsel for the plaintiff and going through the ex parte evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, his suit for declaration and permanent injunction, to the effect that demand of ₹24,978/- raised by the defendant vide letter dated 3.9.2010 was illegal and plaintiff was not liable to pay the said amount to the defendant, was dismissed by the learned trial court, vide its impugned judgment and decree dated 31.8.2012. Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by the learned District Judge, vide his impugned judgment and decree dated 31.5.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Repeated financial transactions between the parties were matter of record. When the plaintiff made default in repaying the amount to the defendant-Bank, with a view to discharge his financial liability, some amicable settlement was arrived at between the parties and an offer of one time full and final settlement was given to the plaintiff, which was subject to realisation of cheque. It was also agreed between the parties that if the cheque issued by the plaintiff is dishonoured, one time offer will become null and void and the same shall stand withdrawn with immediate effect. It was so recorded in Ex.P3 dated 21.2.2008.

It is also not in dispute that when, in compliance of the abovesaid settlement, plaintiff issued cheque bearing No. 614779 (Ex.P10) in favour of the defendant, the same was dishonoured. 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.

A bare combined reading of the both the impugned judgments and decrees would make it crystal clear that appellant was trying to play smart. He availed different financial facilities from the respondent-Bank. When he defaulted in making repayment, a settlement was arrived at between the parties. Accepting the said settlement, plaintiff-appellant issued the cheque which was dishonoured and as a result thereof, settlement arrived at between the parties was set at naught by the act and conduct of plaintiff-appellant himself. Thus, he cannot be allowed to get undue benefit of his own wrong. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned court below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

So far as the judgment of Hon'ble Supreme Court in **Nagarpalika Thakurdwara Vs. Khalil Ahmed and others, 2016 AIR (SC) 4477**, relied upon by learned counsel for the appellant, is concerned, there is no dispute about the observations made therein. However, since the suit filed by the plaintiff-appellant was not dismissed on account of non maintainability but it was dismissed on its merits, after taking into consideration ex parte evidence of the plaintiff, the judgment is of no help to the appellant, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State**

of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 10 of its impugned judgment, which deserve to be noticed here, read as under:-

> "In the Ld. trial Court plaintiff Varinder Madaan appeared in the witness box as PW1. He has tendered, in his statement, his duly sworn affidavit Ex.PA, containing all the facts, as narrated in the plaint alongwith documents Ex.P1 to Ex.P14 as part of his statement. Ex.P1 is the true copy of the original Credit Card of the appellant/ plaintiff and whereas Ex.P2 is the true copy of his Saving Account pass book. It is admitted fact that the appellant/ plaintiff was Credit Card holder of the defendant. He has also availed some services of the defendant through his abovesaid Credit Card. Then, it is also admitted fact that defendant- bank issued a letter Ex.P3 dated 21.02.2008 thereby offering him a sum of Rs.35,000/- in full and final settlement of the entire amount of his Credit Card. As per record, the appellant/ plaintiff has deposited the said amount with the respondent/ defendant bank through 10 installments in different amounts of different dates as per payment type settlement Ex.P13. As per letter dated 21.02.2008, the defendant bank made abovesaid offer of Rs.35,000/- to the appellant/ plaintiff as full and final settlement of his Credit Card amount subject to the condition that he will

pay the said amount of Rs.35,000/- in four installments. Then, it is also mentioned in this letter that if any cheque issued by the appellant/ plaintiff to make out the payment of the abovesaid amount of Rs.35,000/- is dishonoured, then in that event, the abovesaid one time offer is to become null and void at the discretion of the bank and waivers/ concession, if any, granted is to be withdrawn with immediate effect. Then perusal of the abovesaid payment type settlement Ex.P13 shows that one of the cheques Ex.P10 bearing No. 614779 issued by the appellant/ plaintiff in the sum of Rs.4000/- to make part payment out of the abovesaid sum of Rs.35,000/- was dishonoured. So as such it is evidentally clear that the appellant/plaintiff has failed to comply the terms and conditions of the letter Ex.P3 in making the payment of sum of Rs.35,000/- as one time full and final settlement of the amount, in question. Since he has failed to comply with the terms and conditions as recorded in letter Ex.P3, so as such the concession/ waiver granted to him by the respondent/ defendant bank stood withdrawn as well as become null and void. So in this situation the demand raised by the respondent/ defendant bank vide letter Ex.P14 dated 03.09.2010 cannot be said to be illegal, wrong and unjustified and as such the appellant/ plaintiff is not entitled to seek any declaration as well as permanent injunction as prayed for.*"*

During the course of hearing, learned counsel for the appellant failed to 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 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 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.

31.7.2017 **(RAMESHWAR SINGH MALIK)**
Ak Sharma **JUDGE**

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