

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

RSA No.235 of 2017 (O&M).

Decided on:-January 19, 2017.

Bhinder Singh @ Gurpreet Singh (DTC Wale).

.....Appellant.

Versus

Devi Dyal.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. J.K. Singla, Advocate
for the appellant.

HARI PAL VERMA, J.

Appellant-defendant Bhinder Singh @ Gurpreet Singh has filed the present regular second appeal against the judgment and decree dated 3.10.2016 passed by learned Additional District Judge, Bathinda whereby his appeal against the judgment and decree dated 29.4.2016 passed by learned Civil Judge (Junior Division), Phul, was dismissed.

Briefly stated, facts of the case are that respondent-plaintiff Devi Dyal had filed a suit for recovery of Rs.2,95,750/- i.e. Rs.2,27,500/- being the principal amount and Rs.68,250/- as interest thereon, against the appellant-defendant. As per plaint, the plaintiff is running a business under the name & style of M/s New Singla Tyres, Rampura Phul and deals in the business of manufacturing and sale of tyres etc. The defendant purchased tyres from the plaintiff for a sum of Rs.2 lacs plus 13.5% VAT i.e. Rs.27,500/- (a total sum of Rs.2,27,500/-) on credit basis vide bill No.1996

dated 26.10.2011. The defendant agreed to pay the amount within a few days. However, the defendant did not visit the shop of plaintiff and failed to pay the aforesaid amount to the plaintiff. But later on, the defendant issued a cheque No.047275 dated 20.2.2012 in favour of the plaintiff under his signatures from his account No.13891530002030 maintained by him with HDFC Bank Limited, Rampura Phul as security for repayment of the said amount. The defendant further assured the plaintiff that the payment of said amount shall be made to the plaintiff within a period of three months from the date of issuance of the cheque and the defendant will take back his security cheque. Still, even after issuance of said cheque, the defendant did not make the payment of any amount to the plaintiff either against the principal amount or against the amount of interest leading to filing of the suit for recovery by the plaintiff.

The appellant-defendant filed his written statement taking preliminary objections that the suit is not maintainable in the present form; the plaintiff is estopped from filing the present suit by his own act and conduct; the plaintiff has no cause of action to file the present suit; the plaintiff has no locus standi to file the present suit; the plaintiff has not come to the court with clean hands and the suit has been filed by the plaintiff just to harass the defendant.

On merits, the appellant-defendant pleaded that he had never purchased the tyres from the respondent-plaintiff nor he had ever agreed to pay the said amount. The bill is forged and the same is not binding upon the rights of the defendant. He had given one cheque No.047275 without date, without mentioning the amount on the cheque to the plaintiff as security. The

plaintiff might have prepared the said cheque for causing loss to the defendant. He demanded back the said cheque from the respondent-plaintiff many times, but the plaintiff did not return the same.

The plaintiff filed replication reiterating the facts of plaint and denying the averments made by the defendant in his written statement. The trial Court formulated the following issues:

1. Whether the plaintiff is entitled to the recovery as prayed for? OPP
2. Whether the plaintiff has no cause of action and has no locus standi to file the present suit? OPD
3. Whether the present suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the documents on the basis of which the plaintiff claims his claim are forged one? OPD
5. Whether the present suit filed for just to harass the defendant? OPD
6. Relief.

The trial Court vide judgment and decree dated 29.4.2016 decreed the suit of the plaintiff for recovery of Rs.2,95,750/- on the basis of bill dated 26.10.2011 including interest @ 1% per month from the date of bill till its realization. The trial Court has observed as under:

“From the pleadings of the plaintiff as well as defendant, the testimony adduced by the witnesses, who has proved invoice/memo No.1996 dated 26.10.2011, it is proved that the defendant has purchased the tyres from the plaintiff vide bill No.1996 Ex.P1 dated 26.10.2011 on credit basis and issued the cheque No.047275 dated 20.02.2012 Ex.P4 in favour of plaintiff. Defence set up by the defendant that cheque in

question was given as security is apparently not sustainable because he has failed to plead and prove as to for what purpose/security he had issued the cheque in favour of plaintiff. When the cheque in question is examined in light of invoice No.1996, which is in accordance with accounting procedure and Vat on account has already been paid by the plaintiff, it is proved that the tyres were purchased by the defendant but he has failed to make the payment thereof. So, from the above discussion, issue No.1 is decided in favour of the plaintiff and against the defendant.”

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellant-defendant preferred an appeal before the lower appellate Court. However, vide judgment and decree dated 3.10.2016 passed by learned Additional District Judge, Bathinda, the said appeal was dismissed.

It is in the aforesaid circumstances, the appellant-defendant has filed the present regular second appeal.

Learned counsel for the appellant-defendant has argued that the impugned judgments and decrees passed by the Courts below are totally against the facts and contrary to the record as available on file. The appellant-defendant has clearly denied that he ever purchased the tyres from the respondent-plaintiff. Since the defendant had regular transactions with the plaintiff, he had issued a cheque as security which was otherwise without date and amount. The plaintiff might have prepared the said cheque for causing loss to the defendant. When the defendant demanded back the said cheque, the plaintiff did not return the same and in this manner, the cheque has been tampered by the plaintiff. The plaintiff has failed to produce and

prove the original bill on record and has produced a photocopy of the bill which is otherwise not admissible in evidence. There is not even a single oral or documentary evidence except a photocopy of the bill dated 26.10.2011 in support of the case of plaintiff.

I have heard learned counsel for the appellant-defendant.

While filing the suit, the respondent-plaintiff has sought relief of recovery of Rs.2,95,750/- i.e. Rs.2,27,500/- being the principal amount and Rs.68,250/- being the amount of interest thereon @1% per month w.e.f. 26.10.2011 till 25.4.2014 along with pendente-lite and future interest thereon @ 1% per month w.e.f. 26.4.2014 till its realization. The claim of the plaintiff is based on the bill dated 26.10.2011 Ex.P1 as per invoice No.1996 for Rs.2 lacs plus Rs.27,500/- as 13.5% VAT. It is the pleaded case of the respondent-plaintiff that the appellant-defendant had purchased tyres for the said amount. Interestingly, the said bill was issued on 26.10.2011 and thereafter, the appellant-defendant had issued a cheque dated 20.2.2012 which clearly shows that the cheque was issued by the appellant-defendant after the purchase of tyres. Therefore, the issuance of cheque is a clear acknowledgement of liability by the appellant-defendant towards the respondent-plaintiff.

Accordingly, the suit was decreed by the trial Court along with interest stated in the decree. However, learned lower appellate Court though has dismissed the appeal filed by the appellant-defendant, but has already modified the judgment and decree of the trial Court and has decreed the suit of plaintiff for recovery of Rs.2,27,500/- along with interest @ 12% per annum w.e.f. 26.10.2011 till filing of the present suit along with future

interest @ 6% per annum from the date of institution of suit till realization of the decretal amount. Thus, while issuing the cheque, the appellant-defendant has acknowledged his liability. He has failed to establish that there were regular transactions between the parties.

Both the Courts below have recorded concurrent findings and no fault can be found in the impugned judgments and decrees passed by the Courts below. Therefore, no substantial question of law arises in the present regular second appeal and the same is, accordingly, dismissed.

January 19, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No