

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

RSA No. 2404 of 2017 (O&M)

Date of decision: 26.10.2017.

Smt. Nishi Bhargava

...Appellant

versus

Anil Kumar Sharma

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Vivek Khatri, Advocate for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

Ex. DX upon which learned counsel for the appellant posits the entire edifice of his case inspires no confidence. The document is rough notings on a page of an ordinary exercise book which appears to have been maintained by the defendant as Manager of the hotel run by the plaintiff. On this page of the document there are entries of expenses met on daily needs, for instance, milk, juice, cold drink etc. spent to buy goods to run the Hotel kitchen and there is a telling entry at the end of the running account in the writing which reads "P.F. Penalty Anil" against which in the sixth column has been scribed the figure "₹ 50,000/". 'Anil' is none other than the defendant-Manager of the hotel against whom the present suit for recovery of ₹ 50,000/- was brought by the plaintiff-owner and presently the appellant in second appeal. It is clearly to eyesight in a different form of handwriting and at the end of the document the penalty is scribed by fraudulent creation into the

document Ex. DX which was honestly admitted by the defendant partly being in his hand writing but was stoutly denied as far as the entry of ₹ 50,000/- is concerned which was an extraneous introduction and an interpolation as held by the courts a quo. The Exhibit DX is not placed on the present file but has been produced by the learned counsel for the appellant on the asking of the Court for its perusal to take stock of it. The photocopy of the same is taken on record as Mark 'A'.

2. It may be noticed that the suit was brought by the plaintiff for the recovery of ₹ 50,000/- against the defendant who was employed as a Manager of the hotel. Both the Courts have held that there is no legal evidence to support handing over of ₹ 50,000/- by the appellant-plaintiff to the defendant to remit into the provident fund account of the employees of the hotel maintained in the office of the Employees Provident Fund Commissioner, Rohtak. In a suit for recovery of money, the evidence must be direct and unimpeachable. Both the Courts have dismissed the suit for excellent reason.

3. No ground for interference is made out against the concurrent findings of fact recorded by both the Courts below after appreciating the evidence on record and for good reasons. The suit appears to be a clumsy defence mechanism by the plaintiff against imposition of penalties etc. by the authorities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for non-deposit of subscriptions of the employees of Provident Fund dues by the establishment owned by the plaintiff-appellant.

4. Heard Mr. Khatri for the appellant. His argument fails to impress me that document Ex DX has legal value upon which a decree should have passed. Daily purchases of raw material in small amounts to run the hotel should not be mixed up with handing over a huge sum of 50,000/- to the defendant for onward deposit with the PF authorities in response of notices issued by them under the Act calling deposit of employees' statutory dues.

5. The appeal is devoid of merit and is dismissed.

6. With the dismissal of the appeal, the application under Section 5 of the Limitation Act, 1963 will be treated as disposed of with the main appeal.

(RAJIV NARAIN RAINA)
JUDGE

October 26, 2017

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Whether speaking/reasoned : Yes

Whether reportable : No