

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

**RSA No.2832 of 2017 (O&M)  
Date of Decision: 11.07.2017**

Umesh Kumar Goswami

... Appellant

Versus

Dr. Rajiv Grover

... Respondent

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Amit Jain, Advocate,  
for the Appellant.

**ANIL KSHETARPAL J.**

**CM No.7024-C of 2017.**

This is an application under Section 149 of CPC for permission to make up deficiency in the payment of Court fee. As per office report, complete Court fee has already been deposited. Delay, if any, is condoned.

Application is allowed.

**RSA No.2832 of 2017.**

Defendant is appellant in this Regular Second Appeal arising out of suit for recovery of Rs.23,75,000/- alongwith interest @ 12% p.a. The plaintiff has filed suit on the basis of receipt dated 11.12.2009. Defendant in the written statement took the stand that receipt has been obtained by fraud and misrepresentation. Defendant, however, pleaded that no payment had ever been made by the plaintiff. It was further pleaded that

signature of the defendant was obtained on blank paper in a fraudulent manner as plaintiff and defendant are childhood friends.

It may be significant to note here that separately, plaintiff had filed another suit for recovery of Rs.2,00,000/- vide receipt dated 03.04.2009. The suit was decreed. It is also evident from the file that defendant-appellant had issued six cheques in favour of the plaintiff each amounting to Rs.50,000/-. On presentation, these cheques were dishonoured. Plaintiff filed two complaints under Section 138 of the Negotiable Instrument Act, 1881. The appellant was convicted and ultimately he has admittedly paid the amount under cheques during the appeal.

In the pleadings, appellant had admitted his signatures on receipt Ex.P-1. During cross-examination, appellant was given suggestion to the effect that the entire receipt is in his hand-writing. Initially, he admitted writing on Ex.P-1 but thereafter, feigned ignorance by saying that he does not remember whether Ex.P-1 is in his hand-writing or not, although, the signature on Ex.P-1 was once again admitted. The appellant also admitted his conviction in the complaint under Section 138 of the Negotiable Instrument Act, 1881. The appellant also stated that in appeal against conviction, he has compromised with plaintiff-respondent and made the payment.

Both the Courts decreed the suit. However, the first Appellate Court has partly accepted the appeal with respect to payment of interest in absence of agreement.

Learned counsel for the appellant has raised two arguments. (i) Ex. P-1 refers to some ledger but the ledger has not been produced (ii) there

is misreading of evidence as Suresh Ahuja in his cross-examination has denied payment in his presence.

With regard to first argument of learned counsel for the appellant, it may be sufficient to note that defendant-appellant at one stage even admitted that Ex.P-1 is in his hand-writing but later on feigned ignorance. It clearly shows that Ex.P-1 was written by the defendant-appellant and duly signed by him. In these circumstances, non-production of ledger would not adversely affect the case of plaintiff. It is not the case of the defendant that plaintiff is in the business of extending loans. Therefore, ledger can at the most be a note book noting various payments.

Counsel for the appellant has produced before me copy of the statement given by the plaintiff Rajiv Grover while appearing as PW1 as also the statement of appellant-defendant Umesh Kumar Goswami, who appeared as DW1. I do not find any misreading of evidence by the Courts below.

Another argument of learned counsel for the appellant is that Suresh Ahuja has stated while appearing in a complaint case that money was not paid in his presence and, therefore, payment of the amount is not proved. It is nowhere the case of plaintiff that payment was made in the presence of Suresh Ahuja. The case of the plaintiff is that payment of Rs.23,75,000/- was given in 11 installments in the year 2009 and receipt was executed in the office of Suresh Ahuja. In any case, once the signatures on the receipt are admitted by the appellant and the defendant-appellant has not been able to substantiate the plea of fraud as pleaded in the written statement, therefore, I do not find any reason to differ with the concurrent finding of fact arrived at by the Courts below.

Therefore, the appeal is ordered to be dismissed in limine.

11.07.2017  
sk

**(ANIL KSHETARPAL)**  
**JUDGE**

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | No  |