

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3928 of 2017 (O&M)
Date of decision: 10.08.2017

Jagdish Singh

... Appellant

Vs.

Hardeep Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gursimran Singh Madaan, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 30.11.2015 and first appeal filed by defendant No.2 was also dismissed by the learned first appellate Court, he has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that on 23.11.2006 after selling the land, the plaintiff deposited a sum of Rs.4,80,000/- in cash with the defendants and the defendants agreed to pay interest @ 1.15% per month on this amount. A writing to this effect was scribed by defendant No.2 on the letter pad of defendant No.1. Out of the interest, the defendants have returned amount of Rs.45,000/- on 05.11.2008 and Rs.1,00,000/- on 02.12.2008 in the presence of Sukhmander Singh and Beant Singh. A writing in this regard had also been

made on the same letter pad, but thereafter, despite his repeated requests, the defendants did not pay anything out of the principal amount or interest amount to the plaintiff.

Having been served in the suit for recovery filed by the plaintiff, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to recover the suit amount of Rs.5,05,112/- from the defendant, as prayed for? OPP.
2. Whether the plaintiff is entitled to charge interest? If so, at what rate? OPP.
3. Whether the suit of the plaintiff is not maintainable? OPD.
4. Whether the suit of the plaintiff is within the period of limitation? OPD.
5. Relief.

In order to discharge their onus, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, suit for recovery was decreed by the learned trial Court vide its impugned judgment and decree dated 30.11.2015. Defendant No.2 filed his first appeal, which was also dismissed by the learned District Judge vide impugned judgment and decree dated 15.05.2017. Hence this regular second appeal at the hands of unsuccessful

defendant No.2.

Heard learned counsel for the appellant.

First of all, defendant-appellant did not deny the specific averments taken by the plaintiff in his plaint, which would amount to an admission by the appellant. Appellant denied his signatures on the writing Ex.P1, which was executed in favour of the plaintiff by the defendant-appellant on 23.11.2006. However, signatures of the defendant came to be duly proved by the plaintiff by examining PW3 Sanjeev Sharma, Handwriting and Fingerprint Expert. This witness was put to cross-examination at the hands of defendant, but PW3 stood the acid test of cross-examination and nothing adverse could be elicited by the defendants.

On the other hand, Handwriting and Fingerprint Expert examined by the defendant-appellant was found to be not a qualified and competent person in his cross-examination. As DW2, he admitted the similarities between the disputed signatures and admitted signatures. There was ample admission on the part of this witness which goes to prove that disputed signatures were similar with the standard signatures, which were of one and the same person. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Appellant was doing the business of commission agent. The writing Ex.P1 dated 23.11.2006 was on the letter pad of the firm M/s Ladhai Ke Enterprises. Appellant was the sole proprietor of this firm of commission agent. Plaintiff also duly proved his source of income. Similarly, PW3 Beant Singh corroborated the version of the plaintiff. Again, PW4 Buta Singh deposed about

the capacity of the plaintiff to pay the amount in question to the defendant. In this view of the matter, it can be safely concluded that the plaintiff has duly proved his case, by leading cogent and convincing evidence and his suit for recovery was rightly decreed by both the learned Courts below. Under these undisputed facts and circumstances of the case, no fault can be found with the impugned judgments and decrees passed by both the learned Courts below and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Gian Chand and Brothers and another Vs. Rattan Lal @ Rattan Singh, 2013 (2) SCC 606 (SC).***
2. ***Harbant Dass Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar, 1992 (2) R.R.R. 34 (P&H).***
3. ***Uttar Haryana Bijli Vitran Nigam Limited and others Vs. Rasida and others, 2010 (33) RCR (Civil) 42 (P&H).***
4. ***Mahinder Kumar Jain and another Vs. Subhash Chand, 2016 (5) RCR (Civil) 445 (P&H).***

Before arriving at its just conclusion, the learned trial Court examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned trial Court in para 12 of the impugned judgment, which deserve to be noticed here, read as under: -

“Now if we see the written statement filed by the defendants, then there is a simple denial to the pleadings of plaintiff as detailed by the plaintiff. It is the basic rule of pleading that every fact pleaded in

the plaint is to answer specifically and there should not be evasive reply and now in the present case, the defendant has not even replied to each and every fact pleaded in the plaint and simply denied whole para to be wrong. He also denied that no writing was scribed by him in favour of plaintiff. So, no consideration was passed to him but the defendant has nowhere denied his signatures on the alleged writing Ex.P1 which was executed in favour of plaintiff by the defendant Jagdish Singh on 23.11.2006. The signatures of the defendant is otherwise also proved by the plaintiff by examining PW3 Sanjeev Sharma, Handwriting and Fingerprint Expert who compared the disputed signatures on the alleged writing with the standard/specimen signatures of defendant and concluded that same are relating to one and same person (Jagdish Singh). In the cross-examination, nothing favourable could come out to the defendants as the main cross-examination is regarding writing of return of money and to rebut the expert evidence proved on record by the plaintiff, the defendant has also examined his own expert DW2 V.B. Bhatnagar, Handwriting and Fingerprint Expert who also compared the signatures of Jagdish Singh on the alleged writing with his standard/specimen signatures and concluded that questioned signatures appearing on the alleged writing is forged one and have been prepared with the help of free-hand forgery but this Court is of the view that conclusion arrived at by the expert of defendant cannot be taken into consideration because he himself admitted in his cross-examination that he has not obtained any

degree or diploma in the identification of handwriting and finger prints from any recognized institution. If we see his cross-examination, then he also admitted the similarities between disputed signatures and there is ample admission on his part which goes to prove that disputed signatures are similar with the standard signatures and has been signed by one and same person in which PW3 Shri Sanjeev Sharma has rightly given opinion vide his report Ex.PW3/1. The plaintiff has also proved his source of advance given to the defendant as he categorically deposed that money was given as they have sold some land and nothing favourable could come out from his cross-examination. PW2 Beant Singh had also deposed regarding the fact that the defendant has returned Rs.45,000/- on 05.11.2008 and again returned Rs.One lac on 02.12.2008 in his presence and in the presence of Sukhmander Singh and in cross-examination also, he fairly admitted that Ex.P1 does not bearing his signatures but he clarified that defendant Jagdish Singh returned Rs.One lac at one time and Rs.45000/- at another time. PW4 Buta Singh also proved the capacity to defendant by the plaintiff as he clearly deposed vide affidavit Ex.P4 that he has handed over the amount to him which he was having on account of sale of his land measuring 29 kanals 17 marlas bearing wasika No.536 dated 07.05.2004 and it was for the defendant to rebut the same but nothing favourable could come out from his cross-examination also. It is also proved that the defendant Jagdish Singh received the amount of Rs.4,80,000/- from

the plaintiff vide writing Ex.P1 dated 23.11.2006 after giving it on letter pad of M/s Ladhai Ke Enterprises and it is also proved that defendant is running the business of commission agent at Nehru Mandi in the name and style of M/s Ladhai Ke Enterprises, Commission Agent, Nehru Mandi, Baghapurana, District Moga from so many years as pleaded in para No.1 of the plaint which is simply denied by the defendant. As per settled law when the facts pleaded in the plaint is not specifically denied by answering to each and every fact, then it seems to be admitted by the other party. Moreover, the plaintiff along with other witnesses also deposed that the defendant is running business of commission agent in the name and style of M/s Ladhai Ke Enterprises and there is no suggestion or evidence on record to disprove the fact. So, it is duly proved on record that the defendant obtained Rs.4,80,000/- on 23.11.2006 on interest @1.15% per month out of which he returned Rs.45,000/- on 05.11.2008 and Rs.One lac on 02.12.2008 and total amount of Rs.5,05,112/- is due and recoverable from the defendant as detailed by the plaintiff in para No.6 of the plaint which is simply denied by the defendant in his written statement. So, the plaintiff is entitled to recover the amount of Rs.5,05,112/- along with interest @1.15% per month. Suit is also held within limitation as the same is filed within three years from the date of advance given to the defendant on 23.11.2006. Hence, issues No.1, 2 and 4 stand decided in favour of plaintiff and against the defendants.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both 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 the 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

10.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No