

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA No.4149 of 2017 (O&M)

Date of decision: 04.09.2017

Pardeep Kumar

..... Appellant

Versus

Usha Goyal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (ORAL)

Defendant is in Regular Second Appeal against the concurrent finding of fact arrived at in a suit for recovery.

Plaintiff had asserted that the defendant borrowed a sum of ₹ 15 lacs paid vide cheques dated 08.10.2010 and 19.10.2010. However, defendant is refusing to repay the amount borrowed.

Defendant appeared and contested the suit denying borrowing of the amount. It was claimed that the plaintiff was to repay the amount and that is how the payment of ₹ 15 lacs was made to the defendant-appellant.

Learned trial Court after appreciating the evidence available on the file as also after examining the income tax returns of the plaintiff decreed the suit filed by the plaintiff.

First appeal preferred by the defendant was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has argued that the appellant

is ready to repay the amount, however, the amount should be ordered to be re-paid in installments.

Learned counsel for the appellant has further argued that he has filed an application for additional evidence to place on file gift deeds dated 11.10.2010 and 21.10.2010. I have considered the submission of learned counsel. The gift deeds sought to be produced by way of additional evidence are totally beyond pleadings. In the written statement, defendant did not even make any assertion that this amount was gifted by the plaintiff to him. No evidence was led in that behalf. The Courts below did not even examine this aspect. At the stage of second appeal, the evidence which is beyond pleadings cannot be allowed to be led. Therefore, the application for additional evidence is dismissed.

The only argument addressed by learned counsel for the appellant that he is ready to make the payment, however, the payment should be ordered in easy installments. I have considered the submission. It would be for the appellant to convince the Executing Court to recover the amount by way of installments.

Learned counsel for the appellant, at this stage, has further argued that the Courts below have wrongly drawn a presumption under Section 118 of the Negotiable Instruments Act. He submits that these cheques were without consideration. I have considered the submission of learned counsel for the appellant. Appellant had borrowed the amount which was paid through cheques. The payment under the cheques was duly credited in the account of the appellant. In these circumstances, passing of the consideration under the Negotiable Instruments is clearly proved.

Still further, as per Section 118 of the Negotiable Instruments

Act, 1881 there is a presumption of consideration as to date, time of acceptance, time of transfer, order of indorsement as well as stamps and that holder is a holder in due course. It was for the defendant to rebut the presumption. Defendant has not led evidence to rebut the presumption.

In view of the concurrent finding of fact which is not being even disputed in this Court, I do not find any good ground to interfere in the Regular Second Appeal.

Regular Second Appeal is dismissed.

04.09.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No