

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4035 of 2011
Date of Decision: 14.02.2018

Ajmer SinghAppellant

Vs.

Rajinder Kumar SinghalRespondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.V.K.Shukla, Advocate, for the appellant.
Mr.B.S.Bhalla, Advocate, for the respondent.

RITU BAHRI, J. (ORAL)

The appellant/defendant has come in appeal against the judgment of the learned appellate Court dated 08.08.2011 whereby, the appeal against the judgment of the trial Court dated 19.04.2010 has been accepted and suit of the plaintiff has been decreed for recovery of Rs.05,02,662.74.

The case set up by the plaintiff/respondent (herein) was that defendant/respondent (herein) was agriculturist. In the first week of October, 2004, the defendant asked the plaintiff that he wants to purchase a Sonalika Tractor. His land was already mortgaged with State Bank of Patiala, Baghapurana. The defendant/appellant requested that in case, the plaintiff/respondent deposits the dues of defendant with said Bank, he will purchase a new Sonalika Tractor from the plaintiff/respondent by mortgaging his land. He promised to repay the amount along with @ 15% per annum within six months. On his assurance, the plaintiff/respondent deposited the following amounts in the Tractor Loan Account No.01574063178/01 of the defendant in the said Bank:

1.	Rs.1,50,000/-	On 25.10.2004
2.	Rs.250/-	On 26.10.2004
3.	Rs.1,30,546.75p	On 26.10.2004

This amount was deposited by plaintiff/respondent through his salesman Lakhvir Singh of Village Nathoke. The bank issued “No Due Certificate” and after deposit of the said amount no writing was obtained by the plaintiff/respondent from the defendant/petitioner.

The defendant/petitioner has not purchased new tractor from plaintiff nor repaid his money. The plaintiff is entitled to recover Rs.5,02,662.67p along with interest amount of Rs.80,425.92p. He request the defendant many times to repay his money, but of no effect. Hence, the suit was filed.

Upon notice, defendant/appellant appeared and filed written statement with preliminary objections that suit was not maintainable and plaintiff/respondent has no locus standi to file this suit. On merits, it was replied that plaintiff himself cheated the defendant. There was no written agreement between the parties. Remaining averments made in the plaint were also denied and ultimately a prayer for dismissal of the suit was made. Thereafter the issues were framed by the trial Court.

The trial Court has dismissed the suit of the plaintiff/respondent on the ground that there was no written agreement between the parties. Even though the deposit of the amount in the account of the defendant was proved but this fact does not give a right to plaintiff/respondent to recover this amount from him. As the amount was deposited by plaintiff/respondent from his own sources but there was not entry in his account books with regard to the said amount.

The learned appellate Court has reversed the findings of the trial Court and has held that the aforesaid depositing the amount of Rs.1,60,000/- on 25.11.2004 and Rs.61,165.99 on 27.11.2004, a certificate to the effect Ex.P10 has been issued by the Bank in this regard. Both these certificates have been produced by the plaintiff in the Court and have been proved by PW1 Anil Goyal, Assistant Manager of the Bank. Not only that plaintiff himself made into witness box as PW2 and filed his duly sworn affidavit Ex.PW2/A. After the cross-examination, a suggestion was put to the plaintiff that he had deposited the disputed amounts in a fake manner and a further suggestion was put to him that he has deposited the disputed amounts in the account of the respondent/defendant without any instructions. Both

these suggestion have been denied by the plaintiff/respondent. The very fact that by giving suggestions, stated above, the appellant/defendant has admitted the receipt of amounts in dispute in his loan accounts from the plaintiff/respondent. Furthermore, absence of cross-examination on remaining part of the statement of the appellant/defendant in his examination-in-chief also shows that said part of the statement of the witness was not contested by the plaintiff/respondent, which amounts to admission of the case of plaintiff/respondent. Reliance can be made upon Jaswinder Singh and Others Vs. Kartar Singh and others 2005(2) LJR, 493, P&H High Court, wherein, it has been laid down that 'there is no cross-examination challenging the aforesaid assertion of Parvesh Chander Kohli, even a suggestion was not put to him on the aforesaid factual aspect at the behest of the respondent-plaintiff during his cross-examination. It is therefore, natural to infer that the aforesaid assertion in the statement of Parvesh Chander Kohli, DW4 was not contested by the respondent-plaintiff Kartar Singh. Thus viewed, it is clear that the essential ingredients in the execution of the wills delineated in Section 63 of the Indian Succession Act, 1925 stood duly established". In the present case there was hardly and necessity on the part of the plaintiff/respondent to prove that fact, once the amounts so advance by him find reflected in the loan accounts of the appellant/defendant. Reliance can be made upon Kaka Singh Vs. Krishna Devi and others, 2009(2) SLJ, 1161, wherein, it has been laid down that "in this regard, learned counsel for the appellant/defendant has contended that once the receipt has been executed, no other proof is required to prove that consideration of money was transferred from the loaner to the borrower. In the present case receipt which has already been proved on record would tantamount to the transfer of the consideration from the loaner to the borrower and no further proof is required to proved that the pronote is a paper transaction only. Even if it is presumed that the payment was received by the respondent/defendant, then he cannot deny the refund of the amount so received by him from the plaintiff/respondent.

So, the judgment passed in the appeal filed by the respondent/plaintiff for recovery of Rs.5,02,662-74 was rightly decreed by the learned appellate Court keeping in view the certificates Ex.P9 and

Ex.P10 which have been issued by the Bank and statement made by PW-1 Anil Goyal, Assistant Manager, of the Bank.

So in the light of the discussion, the order of the learned Appellate Court does not reflect any material irregularity or perversity which warranting interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

14.02.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No