

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.4308 of 2011 (O&M)

Date of Decision: 14.02.2018

Master Sajjan Singh

....Appellant (s)

Versus

Kansi Ram

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Manoj Chahal, Advocate
for the appellant.

Mr. Sudhanshu Makkar, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

CM-12448-2011:

Prayer in this application filed under Section 5 of the Limitation Act is to condone the delay of 4 days in filing the present appeal.

For the reasons stated in the applications, the same is allowed and delay of 4 days in filing the present appeal is condoned.

Regular Second Appeal No.4308 of 2011 (O&M)

The instant regular second appeal has been preferred by the appellant-plaintiff against judgment dated 29.03.2011 passed by learned Additional District Judge-II, Bhiwani, whereby, his appeal against the

judgment dated 28.01.2010 passed by learned Additional Civil Judge (Sr. Divn.), Bhiwani was dismissed.

Briefly stated, appellant-plaintiff filed a suit for recovery of Rs.30,000/- along with interest with the averments that in the month of May, 2001, respondent-defendant had purchased wheat and mustard from him. The respondent-defendant paid Rs.55,000/- in cash, whereas the balance amount of Rs.30,000/- along with interest was promised to be returned to appellant-plaintiff by 15th July, 2001. But the defendant-respondent did not return the aforesaid amount within the stipulated period and had been avoiding the payment even after 15.07.2001 also, on one pretext or the other. Finally, on 02.05.2002, the respondent-defendant executed a writing in the presence of witnesses namely Pan Singh and Bansi Lal to the effect that he would return the remaining amount of Rs.30,000/- along with interest to the appellant-plaintiff on or before 15.07.2002. However, despite the respondent-defendant having executed the writing, which bears his signatures and two witnesses, he did not pay the due amount. Hence, a suit for recovery of Rs.30,000/- along with interest was filed.

On notice having been issued to the respondent-defendant, he has filed his written statement, taking various preliminary objections, including that the suit is wrong, against law and facts and is not maintainable. Plaintiff is estopped by his own act and conduct to file the present suit. Plaintiff has no locus standi or cause of action to file the present suit, as the suit has not been valued properly for the purpose of Court fee.

From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to recovery of Rs.30,000/- along with interest as prayed for? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.
6. Relief.

In order to prove his case, appellant-plaintiff examined himself as PW-1. He also examined Bansilal as PW-2, Telu Ram as PW-3 and Shamsheer Singh Malik, Handwriting and Finger Print Expert, as PW-4.

The Trial Court after hearing both the sides and perusing the evidence on record, dismissed the suit, with the observation that it was for the plaintiff to prove that the defendant had purchased wheat and mustard from him and in pursuance thereof, the defendant had executed a writing in favour of the plaintiff. However, the plaintiff did not produce any evidence regarding the sale-purchase. Paragraph no.16 of the judgment reads as under:-

“16. The onus was upon the plaintiff to prove that defendant had purchased wheat and mustard and writing was executed by the defendant. So far as purchasing of food grains is concerned, plaintiff has not produced any record maintained by him regarding sale purchase. In his cross-examination, he specifically admitted that he has a record with him but he has

not produced the same. Why the plaintiff has not produced the record is best known to him. In the plaint, it is nowhere mentioned that how much quantity of mustard and wheat were purchased by the defendant and what was the rate of it. Even no date is mentioned when the defendant purchased the food grain. So far as execution of writing Ex.PI is concerned, defendant specifically denied its execution. In para no.5 of the plaint, it is mentioned that defendant executed writing in presence of Pan Singh and Bansi Lal but while appearing before the Court as PW1, plaintiff has stated that writing was executed in presence of Pardeep and Bansi Lal. PW2 Bansi Lal also deposed that writing was executed in presence of Pardeep Kumar but in the plaint, there is no mention of Pardeep which creates doubt.”

Aggrieved from the aforesaid judgment and decree passed by the trial Court, the appellant-plaintiff preferred an appeal before the lower Appellate Court, which was also dismissed.

Still aggrieved, the appellant-plaintiff has filed the present appeal, challenging the judgment and decrees passed by both the Courts below.

Learned counsel for the appellant-plaintiff has argued that the respondent-defendant had executed a writing, admitting therein the claim of the appellant-plaintiff. PW-2 Bansi Lal, who is an attesting witness, has supported his claim and therefore, the suit was required to be decreed.

On the other hand, learned counsel for the respondent-defendant has argued that the appellant-plaintiff has failed to establish his case and the present suit has rightly been dismissed.

I have heard learned counsel for the parties.

Apart from the fact that there is concurrent finding of fact recorded by both the Courts below, the appellant-plaintiff has failed to establish that the respondent-defendant had ever purchased wheat or mustard from the appellant-plaintiff. Pan Singh, who is stated to be the attesting witness of the writing, has not been examined. Moreover, in the very plaint itself, the appellant-plaintiff has failed to disclose the date of sale or the quantity of stock so sold to the respondent-defendant. Even the execution of writing dated 02.05.2002 Ex.P1 is also not proved. Statements of PW-1 Sajjan Singh and PW-2 Bansi Lal are also quite doubtful. The story of execution of writing Ex.P1 is surrounded in suspicion.

In these circumstances, this Court does not find any illegality in the judgments passed by both the Courts below.

Accordingly, the present appeal is dismissed.

February 14, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No