

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

**RSA No.1429 of 2013 (O&M)
Date of decision: May 16, 2018**

Balbir Kaur @ Dalbir Kaur and others

...Appellants

Versus

Rajinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudesh Sahi, Advocate for
Mr.Arvind Kashyap, Advocate
for the appellants.

Respondent ex-parte.

INDERJIT SINGH, J.

Appellants Balbir Kaur @ Dalbir Kaur, Parneet Kaur and Parwinder Singh have filed this regular second appeal against respondent Rajinder Singh challenging the judgment and decree dated 23.04.2012 passed by learned Addl. District Judge, Fatehgarh Sahib, whereby the appeal filed by defendant-respondent was allowed and the judgment and decree dated 08.12.2011 passed by learned Civil Judge (Senior Division), Fatehgarh Sahib, was set aside.

Notice of motion was issued. None appeared on behalf of respondent despite service on 20.05.2016 and he was proceeded against ex-parte.

I have heard learned counsel for the appellants and have gone

through the record.

From the record, I find that Jaswant Singh (since died) through LRs filed a suit against defendant Rajinder Singh for recovery of ₹3,85,000/- i.e. ₹3,00,000/- as principal amount and ₹85,000/- as interest, calculated at the rate of 1.5% per month from 27.11.2003 till 27.06.2005 and also for recovery of interest at the rate of 1.5% per month on the said amount from 27.06.2005 till actual and final realization of the said amount.

The main facts of the plaintiff's case are that defendant was on visiting terms with the plaintiff and he was in need of some money to pay certain loans and to meet out the domestic expenses and as such, defendant borrowed an amount of ₹3 lakhs from the plaintiff on interest @ 1.5% per month and agreed to return the same as and when so demanded by the plaintiff. In lieu of said borrowed amount, the defendant executed a pronote and its receipt dated 27.11.2003 in favour of plaintiff in presence of marginal attesting witnesses. The plaintiff is demanding the money but the defendant is not paying the same on one pretext or other.

On the other hand, defendant denied that he was on visiting terms with the plaintiff and he was in need of some money to pay certain loans and to meet out the domestic expenses. It is also denied that defendant borrowed an amount of ₹3 lakhs from the plaintiff on interest @ 1.5% per month and agreed to return the same as and when so demanded. It is further the case of the defendant that plaintiff along with his brothers, is running a shop of Commission Agent at Focal Point, Khera Mani, District Fatehgarh Sahib through its partners Raghbir Singh and Jaswant Singh. Earlier, defendant was selling his agriculture produce at the shop of the plaintiff and his brother Raghbir Singh. At the time of closing the dealing with plaintiff's shop, the defendant cleared all the dues and nothing

remained due against him. On 21.02.2005, plaintiff's brother Raghbir Singh along with one ASI of police station Mulepur and other police officials came to the house of defendant and took him away in car and they forcibly got obtained his signatures on some blank stamp papers in the presence of Parkash Singh, Ex-Sarpanch at about 9.00 p.m. It is further stated by the defendant that he then filed a civil suit in the Court of Civil Judge (Jr. Divn.) Fatehgarh Sahib, which is pending in the said Court and suit was for restraining the present plaintiff from recovering alleged amount. Therefore, defendant was not on visiting terms with the plaintiff after clearing the account.

From the pleadings, following issues were framed:-

1. *Whether the plaintiff is entitled for a decree for recovery of Rs.3,85,000/- from the defendant as prayed for in the head note ? OPP*
2. *If issue No.1 is proved in affirmative, whether the plaintiff is entitled to the interest, if any, if so, on what rate? OPP*
3. *Whether the suit is not maintainable? OPP*
4. *Whether the suit is filed by the plaintiff without any cause of action? OPP*
5. *Whether the plaintiff has locus standi to file the present suit? OPP*
6. *Whether the plaintiff has not come to the court with clean hands and suppressed true and material facts from the Court? OPD*
7. *Relief.*

Plaintiff examined PW-1 Sant Singh, PW-3 Major Singh and examined himself as PW-2. On the other hand, defendant examined himself as DW-1 and DW-2 Parkash Singh.

Learned Civil Judge (Sr. Divn.), Fatehgarh Sahib, vide judgment and decree dated 08.12.2011, decreed the suit and allowed recovery of ₹3 lakhs as principal amount and further 12% per annum

interest at the principal amount of ₹3 lakhs from 27.11.2003 to 27.06.2005 and upto the date of decree and future interest @ 6% per annum from the date of decree till realization thereof with proportionate costs. An appeal was filed by respondent-defendant and learned Addl. District Judge, Fatehgarh Sahib, vide impugned judgment dated 23.04.2012, allowed the appeal and set aside the judgment and decree dated 08.12.2011.

Aggrieved from the above-said judgment dated 23.04.2012 passed by learned Addl. District Judge, Fatehgarh Sahib, present regular second appeal has been filed by the appellant-plaintiff.

From the record, firstly, I find that finding given by lower First Appellate Court i.e. learned Addl. District Judge, Fatehgarh Sahib in the judgment dated 23.04.2012 are correct, as per evidence and law. Learned lower Appellate Court has discussed the evidence produced by the parties in right perspective. The case of the defendant is that he was taken away with the help of one ASI on 21.02.2005 at 9.00 p.m. in the presence of Parkash Singh Ex-Sarpanch and his signatures were obtained forcibly. It is also the case of the defendant that earlier, he was selling his agriculture crop but he closed dealing with the plaintiff's shop and at that time, nothing was due against him. As per defendant, his signatures were obtained forcibly on 21.02.2005 on blank stamp papers with the help of one ASI and he filed the suit on 01.03.2005 i.e. immediately against the plaintiff, Raghbir Singh and others to not to recover any amount illegally and forcibly on the basis of signed blank documents, whereas present suit has been filed on 26.07.2005 after long delay when the suit already filed by the defendant was pending.

Secondly, pronote and receipt are dated 27.11.2003 and till

01.03.2005, no civil suit on the basis of pronote/receipt was filed by the

plaintiff nor there is any legal notice or document to show that money was demanded back by the plaintiff during this period. Rather, suit has been filed in the month of July 2005. Raghbir Singh, who is real brother of plaintiff Jaswant Singh, is stated to have obtained signatures of the defendant with the help of one ASI. Further, learned Addl. District Judge, Fatehgarh Sahib, noticed that pronote and receipt have not been scribed by a licenced deed writer but by Major Singh, Munim of Raghbir Singh Commission Agency, who as on 27.11.2003 had no dealing with the plaintiff and had joined the commission agency of plaintiff somewhere around in the year 2005-06, which further strengthens the case of the defendant that pronote/receipt was scribed on or after 21.02.2005.

Learned Addl. District Judge, Fatehgarh Sahib further appreciated the evidence that plaintiff was having no relationship with Major Singh as on 27.11.2003, then why the plaintiff would approach Major Singh for scribing pronote/receipt. He came into employment, as discussed above, in the year 2005-06. Further, PW-3 Major Singh admitted in his cross-examination that Rajinder Singh, defendant did not sell his crop since he started working in the said commission agency. Therefore, all these facts strengthen and support the case of the defendant. Otherwise also, it is admitted that earlier Rajinder Singh defendant was selling his crop through plaintiff's shop. The plaintiff could have produced the account books to prove all these facts. If the defendant has stopped selling the crop or having no dealing with the plaintiff or with his firm, then why the plaintiff would lend such a huge amount to the defendant.

Keeping in view the evidence on record, I find that the findings

have been given by learned lower Appellate Court correctly by appreciating

the evidence in right perspective. In no way, the findings can be held as perverse or against the law. No illegality has been committed while passing the impugned judgment. No substantial question of law arises in the present case.

In view of the above discussion, I find that impugned judgment dated 23.04.2012 passed by learned Addl. District Judge, Fatehgarh Sahib, in appeal, is correct and as per law and the same is upheld.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No