

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

**R.S.A No.1438 of 2016(O&M)
Date of decision :07.08.2018**

Parvinder Singh

..... Appellant

Versus

Sarabjit Singh (deceased) through LRs Jasbir Kaur and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naresh Kaushik, Advocate
for Mr. Kulwant Singh Dhanora, Advocate
for the appellant.

LISA GILL,J.

Plaintiff-appellant is aggrieved of judgment and decree dated 12.08.2015, passed by the learned Additional District Judge, Jalandhar, whereby judgment and decree dated 22.07.2013, passed by the learned Additional Civil Judge (Sr. Division), Phillaur, has been set aside consequently dismissing the suit for recovery of ₹40,000/- filed by the appellant.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for recovery of ₹42,000/- against Sarabjit Singh through his legal heirs and representatives i.e. Sarabjit Singh's wife Jasbir Kaur and son Prabhjot Singh. Appellant-plaintiff claimed that he

had friendly relations with Sarabjit Singh, who was employed with P.W.D. department at Phagwara, District Kapurthala. Sum of ₹40,000/- was borrowed by Sarabjit Singh from the appellant-plaintiff for sending his brother-in-law to Italy. Sarabjit Singh promised to repay the same within two months. In discharge of his liability, Sarabjit Singh issued cheque no. 565650 dated 20.07.2009 for an amount of ₹40,000/- drawn from his account no. 8220 with the Central Co-operative Bank Limited Branch Phagwara, District Kapurthala. It was assured by Sarabjit Singh that the cheque would be honoured at presentation after two months. The present appellant-plaintiff presented the cheque through his banker i.e. Oriental Bank of Commerce, Goraya, Tehsil Phillaur, District Jalandhar, but the same was dishonoured. It was mentioned in memo dated 09.10.2009 that it was dishonoured due to insufficient funds.

It was pleaded that Sarabjit Singh had since passed away, but he was survived by his legal heirs, who are liable to make good the cheque amount along with interest. It was pleaded that the legal heirs were approached to honour the liability of their predecessor-Sarabjit Singh, but they refused to pay the said amount. Therefore, this suit was filed for recovery of the amount.

Respondent-defendants resisted the suit. Joint written statement was filed raising various preliminary objections therein. It was pleaded that Sarabjit Singh (since deceased) had no concern or connection with the plaintiff. There were no friendly relations or intimacy between the plaintiff and Sarabjit Singh. Therefore, the occasion for borrowing money from the appellant did not arise. It was claimed that

Sarabjit Singh had in-fact taken a loan of ₹50,000/- from the Kapurthala Central Co-operative Bank Ltd. Branch Phagwara. A loan passbook against the loan account no. 772 was issued. Saving account no. 8220 was also held by Sarabjit Singh at the said bank. At the time of availing the loan, Sarabjit Singh had handed over blank signed cheques pertaining to saving account no. 8220 for securing repayment of the loan installments. It was further pleaded that firstly the cheque in question was a false and fabricated document and even if the appellant-plaintiff succeeded in proving the signatures of Sarabjit Singh on the cheque in question, it does not create any liability in favour of the plaintiff as some of the signed cheques belonging to Sarabjit Singh had been lost. The plaintiff might have found some of the cheques and fabricated the same in his favour or transferred the blank cheques in connivance with the concerned bank employees. The alleged cheque was presented after the death of Sarabjit Singh in a *mala fide* manner. No claim was raised by the plaintiff during the life time of Sarabjit Singh. It was pleaded that though a Will dated 26.07.2009 had been executed in favour of defendants no.1 (a) and 1(b), but Sarabjit Singh had also left behind his mother, who was a necessary and proper party to the suit. It was thus prayed that the suit be dismissed.

Replication was filed by the plaintiff. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether Sarabjit Singh deceased, predecessor-in-interest of the defendants borrowed an amount of Rs. 40,000/- and in order to discharge his legal liability he issued cheque no. 565650 dated 20.07.2009 amounting to Rs. 40,000/- and plaintiff is entitled to

- recovery of Rs. 42,000/- as prayed for?OPP
2. If issue no.1 is proved whether plaintiff is entitled to interest as claimed for?OPP
 3. Whether plaintiff has locus standi to file the present suit?OPP
 4. Whether suit of plaintiff is maintainable?OPD
 5. Whether suit of plaintiff is false and frivolous?OPD
 6. Whether suit is bad for misjoinder and non-joinder of necessary parties?OPD
 7. Relief.

Evidence was led by both the parties to substantiate their respective claims.

Learned trial Court on considering the evidence on record, the facts and circumstances of the case decreed the suit of the plaintiff. It was held that the cheque in question Ex.P-1 was presented on 09.10.2009. It was dishonoured for want of insufficient funds and returned vide memo dated 09.10.2009 Ex.P-2. The said document proved the liability of Sarabjit Singh towards the plaintiff. It was observed that there was no reason for Sarabjit Singh to have issued the cheque in favour of the plaintiff, if not, to discharge his liability.

Appeal was preferred by the present respondent-defendants and the same was allowed by learned Additional District Judge, Jalandhar, vide judgement and decree dated 12.08.2015.

Aggrieved therefrom, appellant-plaintiff has preferred the present appeal.

Learned counsel for the appellant argues that the learned Additional District Judge, Jalandhar, has grossly erred in allowing the appeal filed by the respondent-defendants vide judgement and decree dated 12.08.2015. The well reasoned and logical judgement dated 22.07.2013 passed by learned Additional Civil Judge (Sr. Division),

Phillaur, has been wrongly set aside. It is further argued that it is proved on record that the cheque of ₹40,000/- Ex.P-1 was handed over by Sarabjit Singh (since deceased) in discharge of his liability towards the appellant. The said amount was advanced to Sarabjit Singh in May 2009 for sending abroad his brother-in-law-Paramjit Singh. Learned trial Court, it is contended rightly observed that in case the loan had not been advanced, there was no occasion for the deceased-Sarabjit Singh to have handed over the said cheque to the plaintiff. The defendant-respondent, it is contended had failed to prove that any cheque issued by Sarabjit Singh had been lost. Therefore, there is no question of misuse of any cheque by the plaintiff. It is thus prayed that the present appeal be allowed and impugned judgement and decree dated 12.08.2015, passed by learned Additional District Judge, Jalandhar, be set aside and judgement and decree dated 22.07.2013 be upheld.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is claimed by the appellant-plaintiff that the amount in question was borrowed by Sarabjit Singh in May 2009 for sending his brother-in-law-Paramjit Singh abroad. It is however not in dispute that Paramjit Singh left for abroad on 21.11.2006. Paramjit Singh was afforded visa for Italy for the period from 14.11.2006 to 13.02.2007. Therefore, question of borrowing money for his foreign sojourn in May 2009, does not arise. It is to be noted that the plaintiff claimed to have friendly relations with Sarabjit Singh, who was employed with P.W.D. department, Phagwara. Sarabjit Singh was a resident of village Rajgomal,

Tehsil Phillaur, District Jalandhar. He was employed at P.W.D. Department, Phagwara, where he continued to serve till his death. The plaintiff on the other hand is a resident of village Ratenda Tehsil and District Shaheed Bhagat Singh Nagar and worked as a photographer at Banga from 1976 to 1982. Thereafter, he went to Dubai and returned in 1996 and worked as photographer at village Apra Tehsil Phillaur. He opened up a shop of a photographer in the year 2003 at Goraya. Appellant-plaintiff (PW-1) admitted that he was running a shop in the name and style of M/s Jagat Studio at Goraya. There is nothing on record to show that the amount in question was advanced as a loan. There was no writing effected, no pronote or receipt prepared. PW-1 admitted that not even an entry in any note book was made by him. PW-1 admitted that he did not demand even a single blank signed cheque as security from the defendant. Therefore, it is rightly observed by the learned Additional District Judge, Jalandhar that it was for the plaintiff to prove his proximate relations with Sarabjit Singh. PW-1 admitted that he and Sarabjit Singh belonged to different castes, different villages. They never studied together. It is apparent from the testimony of PW-1 that he did not even have knowledge about the level of education of defendant-Sarabjit Singh. PW-1 claimed to be acquainted with Sarabjit Singh since year 2004-05, but he failed to explain how he came into his acquaintance. PW-1 in his cross-examination claimed that Sarabjit Singh was alive on the date of presentation of the cheque i.e. 09.10.2009, whereas it is a matter of record that Sarabjit Singh died on 22.08.2009. Copy of the death certificate of Sarabjit Singh is available on record as Ex.D-3. Learned

Additional District Judge, Jalandhar, has rightly held that there is nothing on record to show from where the plaintiff-appellant sourced the sum of ₹40,000/- or that he had such an amount available with him in cash as alleged.

At this juncture, it is pertinent to note that PW-1 claimed that the cheque in question was filled in and issued by Sarabjit Singh in his favour in his presence. Body of the cheque was filled in with one pen itself. However, it is admitted by PW-1 that signatures of Sarabjit Singh on the cheque (Ex.P-1) are with a different ink from the writing on the body of the cheque. Moreover, PW-2-Dharam Singh, Assistant Manager, Co-operative Bank, Model Town, Phagwara, has also admitted that the writing of the signatures is different from the hand writing on the body of the cheque. It is the categorical stand of the respondents that deceased-Sarabjit Singh did not have any friendly relations with the plaintiff nor did he have any requirement of money in May 2009 for sending abroad his brother-in-law-Paramjit Singh.

In the factual matrix of the case, argument raised on behalf of the appellant-plaintiff that the defendant-respondent failed to explain why the cheque in question was issued by Sarabjit Singh, is devoid of any merit. Appellant-plaintiff needless to say, had to stand on his own legs. No reliance can be placed on the weakness of the case of the defendant. Presumption that the cheque in question was issued by Sarabjit Singh in discharge of his liability towards the plaintiff-appellant, is duly rebutted. Therefore, the learned Additional District Judge, Jalandhar, has rightly allowed the appeal filed by the defendant-respondents.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Judgement and decree dated 12.08.2015, passed by the learned Additional District Judge, Jalandhar, is a well reasoned judgement rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgment and decree dated 12.08.2015 passed by the learned Additional District Judge, Jalandhar, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

07.08.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No