In the High Court of Punjab and Haryana at Chandigarh

RSA- 3999 of 2013(O&M)
Date of Decision:5.12.2018

Surinder Singh

---Appellant

vs.

Amrik Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Harish Goyal, Advocate
for the appellant

Mr. Arihant Jain, Advocate
for the respondent

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<u>Rekha Mittal, J.</u>

Challenge in the present appeal has been directed against judgment and decree dated 6.5.2013 passed by the Additional District Judge, Sangrur whereby appeal preferred by the defendant-respondent against judgment and decree dated 18.5.2011 passed by the Additional Civil Judge (Senior Division), Malerkotla (hereinafter to be referred as “the trial court”) was allowed, judgment and decree of the trial court were set aside and suit filed by the appellant-plaintiff for recovery of Rs. 2,17,600/-, Rs. 1,60,000/- as principal amount and Rs. 57,600/- towards interest, was dismissed.

The appellant-plaintiff filed the suit for recovery on the allegations that the respondent-defendant owed a sum of Rs. 1,60,000/- and in discharge of said liability, he issued cheque No. 227937 dated 6.6.2002 drawn on Oriental Bank of Commerce, Branch Jarg Chowk, Malerkotla from his Account No. 1850 for Rs. 1,60,000/- with the assurance that the cheque would be honoured on presentation within limitation. The appellant presented the cheque to his banker Punjab National Bank, Branch Malerkotla for encashment but the same was returned dishonoured vide memo dated 6.6.2002 with remarks 'insufficient funds'. Despite various requests, the respondent failed to pay the cheque amount to the plaintiff. The plaintiff filed complaint under Section 138 of the Negotiable Instruments Act (in short "the Act").

The respondent-defendant filed the written statement contesting claim of the plaintiffs that he owed an amount of Rs. 1,60,000/- to the plaintiff or issued the cheque in question in favour of the plaintiff. It is averred that plaintiff used to get cleared the documents of trucks of defendant on commission basis and in this process, the defendant had lot of faith in the plaintiff. The plaintiff used to visit the defendant and stole his cheque book containing the cheque in question and some other cheques, duly signed by him. He fabricated the cheque in question for Rs. 1,60,000/-. Vide application dated 26.3.1999, he intimated the Branch Manager Oriental Bank of Commerce, Jarg Chowk, Malerkotla about loss of cheque book. The plaintiff in an illegal and unauthorized manner presented the disputed cheque for encashment and procured memo dated 6.6.2002. The complaint filed by the plaintiff was dismissed by the Judicial Magistrate, Malerkotla vide order dated 13.10.2004.

The controversy between the parties led to framing of issues, reproduced in para 3 of judgment of the trial court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court answered issues No. 1, 2, 4 and 5, taken up jointly in favour of the plaintiff whereas issue No. 3 was answered against the defendant and eventually the suit was decreed for recovery of Rs. 1,60,000/- with interest @ 12% per annum from the date of decree and future interest @ 6% per annum on the principal amount of Rs. 1,60,000/-.

The appeal preferred by the respondent-defendant has been allowed by the first Appellate court and suit filed by the appellant-plaintiff was dismissed by setting aside the judgment and decree passed by the trial court.

Counsel for the appellant would argue that the proceedings initiated under Section 138 of the Act culminated in judgment of acquittal that came to be affirmed by this Court but the courts dismissed the complaint on technical ground of notice being not properly issued. It is further argued that this court while affirming acquittal of the respondent has refused to accept contention of the respondent that cheque book containing cheques with blank signatures of the respondent has been stolen by holding that no prudent person would keep blank cheques with signatures. It is further argued that respondent-defendant has admitted his signatures on the cheque in question, therefore, a presumption is available in favour of holder of the cheque that the same is for consideration but the respondent-defendant has failed to rebut the same.

Counsel representing the respondent has supported findings recorded by the first Appellate court with the submission that the same are based upon detailed consideration of the factual and legal aspects involved in the controversy.

I have heard counsel for the parties, perused the paper book and records.

The first Appellate court reversed the judgment of the trial court by assigning reasons such as:-

i) If a person has sufficient amount in his bank account to honour the cheque in question, then what was the need with the executant to borrow the amount. As per case of the plaintiff, the amount in question was borrowed on 6.6.2002 and immediately cheque was issued for its repayment on the same day.

ii) The financial capacity of the plaintiff can well be judged as it has been proved that he was merely an employee with the defendant.

iii) The plaintiff statedly withdrawn some amount from his account but no such bank account has been produced to prove withdrawal.

iv) The cheque in question pertains to a cheque book of 20th century but while showing the year of issuance of cheque, the figure '19' has been cut and instead '2002' has been mentioned. The defendant in the written statement has raised a plea that the cheque in question is from the cheque book which was lost but there is no replication filed by the plaintiff.

Perusal of the plaint would reveal that there is no specific averment as to the date on which the respondent-defendant borrowed a sum of Rs. 1,60,000/- from the plaintiff. The plaintiff tendered into evidence his affidavit Ex. PW1/A by way of examination in chief. In the opening line of para 1 of the affidavit, again there is no plea as to the date on which the defendant borrowed a sum of Rs. 1,60,000/-. The facts elicited in his cross examination gives an inkling that the plaintiff had withdrawn money from his bank and arranged some money from his residence for giving loan but cheque was given to him on 6.6.2002. In absence of any specific plea raised by the plaintiff with regard to the date of loan, the necessary inference is that the loan was given on 6.6.2002. As has been rightly held by the first Appellate court that if loan was given to the defendant on 6.6.2002 and he had also issued cheque for repayment of loan on the same day without there being any such understanding between the parties that the cheque would be presented for encashment on some future date, there was no reason for the defendant to borrow money if he had funds available to ensure encashment of the cheque.

No doubt, a cheque is a negotiable instrument and a presumption that the same is issued for consideration can be raised under Section 118 of the Act though the same is rebuttable one. The defendant raised a specific plea in the written statement that in the year 1999, his cheque book was lost and he submitted an application with his banker informing loss of cheque book. The defendant appeared in the witness box and tendered into evidence his affidavit Ex. DW1/A and certified copy of application dated 26.3.1999 Ex. D1 given to Branch Manager, Oriental Bank of Commerce, Jarg Chowk, Malerkotla, by way of examination in chief. He was cross examined at length but there is no challenge qua document Ex. D1 or statement of defendant that he had submitted the application to Branch Manager, Oriental Bank of Commerce on 26.3.1999. Indisputably, application Ex. D1 does not make reference to cheque numbers in the cheque book stated to have been lost, may be, that the particulars were not available with the defendant. The plaintiff knowing fully well the defence plea raised in the civil and criminal proceedings, did not bother to examine a witness form Oriental Bank of Commerce, Jarg Chowk, Malerkotla to prove that in the year 1999, any other cheque book was issued to the defendant-respondent. This apart, in cross examination of defendant Amrik Singh, nothing has been put to him that on the basis of his request contained in application Ex. D1 for issuance of fresh cheque book, he was issued another cheque book with figure '19' before commencement of the next century starting with figure '20'. Taking into consideration testimony of Amrik Singh coupled with document Ex. D1 along with the fact that in the cheque in question the figure '19' in the column meant for date has been cut, it can safely be held that presumption available to the cheque in question gets sufficiently rebutted from the testimony of Amrik Singh.

There is no denial that the appellant-plaintiff had been doing the work of clearing of documents of trucks owned by the defendant-respondent. The appellant, in his cross examination, has admitted that the defendant is owner of three trucks but he denied his knowledge with regard to land holdings of defendant. Appellant has failed to produce evidence with regard to withdrawal of money from his account to give loan to the defendant. Taking a view from financial status of the parties coupled with failure of the appellant to prove withdrawal of money from his account and omission to specify the date on which he had lent money to the defendant, on the basis of balance of probabilities, the first Appellate court has rightly held that the appellant-plaintiff has failed to establish his case that he had given a loan to the defendant and the cheque in question was issued by him in discharge of his liability. In the given scenario, the appellant cannot derive any advantage to his contention from observations made by this court in criminal proceedings when otherwise judgment of a criminal court is not binding on the civil court and vice versa. Moreover, since acquittal of the respondent by the trial court was affirmed by this Court, there was no occasion with the respondent to challenge any such observations made by this court while deciding Criminal Appeal No. 2170 of 2005. Analyzed from any angle, I do not find an error much less perversity in the judgment passed by the first Appellate court that would call for intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

5.12.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No