

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1470-2015 (O&M)
Date of Decision: 05.10.2018

Bachan Dass

--Appellant

Versus

Bawa Singh

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashish Muwal, Advocate for
Mr. Dheeraj Mahajan, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

A suit filed by the plaintiff Bawa Singh for recovery of an amount of Rs.89,000/- towards principal as also interest component was decreed by the Trial Court in his favour on 27.10.2011. Civil appeal preferred by defendant Bachan Dass has been dismissed vide judgement dated 31.7.2014 passed by learned Additional District Judge, Gurdaspur.

Resultantly, defendant-appellant Bachan Dass is in second appeal before this Court.

Brief facts of the case are that the suit for recovery was instituted on the pleadings that a sum of Rs.65,500/- was due from the defendant (present appellant) on account of an outstanding loan amount as also towards balance of payment of Kitty collection. Suit had been filed on the strength of an agreement dated 24.9.2002 i.e. stated to have been executed by the defendant (present appellant) in favour of the plaintiff-respondent.

Counsel representing the appellant has vehemently argued that the suit filed by the plaintiff-respondent ought not to be decreed as it was towards outstanding Kitty collection and which is itself in furtherance of an illegal contract/activity. Further urged that the plaintiff/respondent had not

examined any member of the so called Kitty so as to substantiate that there was any outstanding balance towards Kitty collection. Yet another argument raised by counsel was that the agreement in question had not been duly registered and as such, no reliance could have been placed thereupon.

Having heard counsel for the appellant at length, I am of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The contention with regard to registration of the agreement dated 24.9.2002 is without merit. It is not a case of money lending. Rather the suit amount had been claimed on the basis of certain outstanding loan amount and towards Kitty collection. The contention with regard to no member of the Kitty having been examined, is without consequence. The suit had been filed on the strength of an agreement dated 24.9.2002 i.e. stated to have been executed by the defendant-appellant herein in favour of the plaintiff-respondent and thereby acknowledging the amount due. A concurrent finding of fact has been recorded by the courts below with regard to due execution of the agreement dated 24.9.2002 Ex.P-1 and which was duly proved in accordance with law. Such finding has been recorded upon due appreciation of evidence. Plaintiff-respondent had examined PW-1 Pal Singh and PW-2 Chiranji Lal, who were the attesting witnesses. Even PW-4 Janak Raj, Scribe of the agreement had been duly examined and who had deposed in favour of the execution of the agreement dated 24.9.2002.

It may also be noticed that the defendant-appellant on the one hand had denied the execution of the agreement but during the course of cross-examination had admitted as regards affixation of his signatures on the same very document. If it was the stand of the defendant-appellant that

the agreement has been set up by way of fraud or as a result of conspiracy the onus was upon him to have duly proved such stand. Appellant did not discharge such onus.

The courts below have taken a view that the interest claimed by the plaintiff-respondent @ 12% per annum on the principal amount was highly exaggerated and as such, have granted the interest @ 6% per annum from the date of filing of the suit till actual realization. Even as regards interest component no interference would be warranted.

There is no merit in the appeal and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

05.10.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No