

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 1933 of 2015 (O&M)
Date of decision: 16.10.2018

Bhupinder Singh

..... Appellant

Versus

Bhan Singh and others

..... Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

Present : Mr. Sunil Agnihotri, Advocate
 for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for recovery filed by the respondent/plaintiff was decreed by the trial Court and respondent/plaintiff is held entitle to recover Rs.6,60,000.00 with interest at the rate of 9% per annum from 18.07.2002 till realization from appellant/defendant No. 1, whereas suit against defendants No. 2 and 3 has been ordered to be dismissed. The appeal preferred by the appellant was partly allowed, modifying the judgment and decree to the effect that interest would be payable at the rate of 6% per annum with effect from 23.03.2011, the date of decree passed by the trial Court.

The sole submission made by counsel is that since as per affidavit dated 18.07.2002, all the defendants had agreed to refund Rs.6,60,000.00, the appellant is liable to pay the amount only to the extent

of 1/3rd whereas remaining 2/3rd amount is the liability of defendants No. 2 and 3.

The trial Court, in para 20 of the judgment has noticed the judgment Ex.D3 dated 22.10.2008 passed by the Sub Divisional Judicial Magistrate, Samrala wherein the respondent/plaintiff has levelled allegations qua fraud etc. against the appellant and his father Lachhman Singh. In the said proceedings, the respondent/plaintiff did not allege involvement of Gurbachan Singh and Surinder Kumar, defendants No. 2 and 3. On a cumulative consideration of allegations levelled in the criminal proceedings coupled with affidavit Ex. PW2/A dated 18.07.2002, the Court has rightly held that liability to pay the amount is only of defendant No. 1/appellant whereas other defendants are not liable for the same. That being so, I do not find an error much less perversity in consistent findings recorded by the Courts upholding plea of the respondent/plaintiff that he would be entitle to recover the aforesaid amount from Bhupinder Singh - appellant. However, the error committed by the trial Court allowing interest at the rate of 9% per annum has been rectified by the Court in appeal. The Court in appeal has taken a very reasonable and sympathetic view by allowing interest at the rate of 6% per annum from the date of decree passed by the trial Court in place of allowing interest from the date the money was given to the appellant/defendant No. 1. In this view of the matter, I do not find any reason to interfere in consistent findings recorded by the Courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application

for condoning delay of 296 days in re-filing the appeal is of academic relevance.

(Rekha Mittal)
Judge

16.10.2018
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