IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102 **CM-11575-C-2016 in/and**
RSA-4434-2016 (O&M)
Date of Decision : 24.7.2018

Tara Singh **....Appellant**

vs.

Er. R.S.Kanwar **....Respondent**

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Vijay Lath, Advocate for the appellant.

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AJAY TEWARI, J. (Oral)

CM-11573-C-2016

For the reasons recorded, the application is allowed. Delay of 43 days in refiling the appeal is condoned.

CM-11575-C-2016

For the reasons recorded, the application is allowed. Delay of 3 days in filing the appeal is condoned.

Main Case

This appeal has been filed against the judgment of the Lower Appellate Court reversing that of the Trial Court and thereby decreeing a suit for recovery of Rs. 1,25,000/- filed by the respondent against the appellant.

The case of the plaintiff-respondent was that he had advanced the amount because he knew the appellant, by way of two cheques one of Rs. 50,000/- and another one of Rs.75,000/-. The appellant had agreed to pay interest at the rate of 12% and, since he did not make the payment, he filed the instant suit.

The case of the appellant on the other hand was that in fact the respondent had entered into agreement to purchase land from four shareholders (of one of whom the appellant was the power of attorney). Ultimately, the respondent did not have the money and that is why the amount which was paid by the respondent was forfeited in view of his failure to execute the agreement to purchase. Further the case of he appellant was that one of those co-sharers had copies of the agreement to sell and all those co-sharers had connived with the respondent and filed the suit. The Trial Court dismissed the suit holding that the respondent was not expected to advance a further sum of money once his previous loan was unpaid. In the appeal, the Lower Appellate Court however reversed the finding holding that once the appellant had accepted the receipt of the money and had set up a case of agreement to sell it was incumbent upon the appellant to have proved that agreement to sell and, not having done so, preponderance of probability lay in favour of the respondent and consequently decreed the suit. Hence, the present appeal.

Learned counsel for the appellant has argued that respondent is a money lender and could not file a suit without having registered. In this connection he has pointed out that part of the testimony of the respondent wherein he had admitted having given loan to some other persons also. In my considered opinion, the mere fact that a person has given loan on interest to more than one person would not make him money-lender as required under The Punjab Registration of Money-lender's Act, 1938. Not only this, even if it is accepted that the other shareholders connived with the respondent and that he did not have copy of the agreement to sell still would not advance the case of the appellant because admittedly the appellant took no steps in furtherance of that alleged agreement to sell. He did not appear before the Sub-Registrar on the appointed date. He never gave any notice to the respondent for coming present and purchasing the property.

In the circumstances, no fault can be found with the judgment of the Lower Appellate Court. The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

24.7.2018
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No