

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 104

RSA-4525-2016 (O&M)

Date of decision : 08.08.2018

Harjinder Kaur and others

..... Appellants

VERSUS

Rajinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Kewal Krishan, Advocate, for
Mr. Premjit Kalia, Advocate, for the appellants.

. . . .

DEEPAK SIBAL, J. (ORAL)

The facts in brief, which need to be noticed for adjudicating upon the present appeal are that the respondents/plaintiffs instituted a suit seeking therein from the appellants/defendants recovery of ₹8,75,000/-. The case set up by the respondents was that Mohinder Singh, predecessor-in-interest of the appellants had taken a loan from the respondents to purchase agricultural land and in discharge of such liability he had given them a cheque for an amount of ₹7,00,000/-. However, when the cheque was presented for encashment, the same was dishonoured on account of “insufficient funds”, leading to the filing of a criminal complaint by the respondents against Mohinder Singh which abated on account of his death. Thereafter, the present recovery suit was instituted against the appellants who are the legal representatives of Mohinder Singh and have inherited all his movable and immovable assets.

The Trial Court decreed the respondents' suit. The appellants

filed an appeal against the aforesaid judgment and decree in which the Appellate Court only reduced the awarded rate of interest from 12% to 6% per annum. It is in these circumstances that the present Second Appeal has been preferred by the appellants.

Learned counsel for the appellants submits that both the Trial Court as also the Appellate Court have erred in decreeing the respondents' suit as there was no evidence on record of any legally enforceable liability on the part of Mohinder Singh qua the respondents. It was further submitted that Mohinder Singh had not given any cheque to respondent No.1-Rajinder Singh. Rather, there was evidence on record in the form of the statement of DW-1 Rasal Singh that the cheque in question had been given by Mohinder Singh to Rasal Singh as security for purchase of land by Mohinder Singh in Rasal Singh's village. Rasal Singh gave the cheque to respondent No. 1-Rajinder Singh to be returned to Mohinder Singh but he misused the same.

The above submissions made by learned counsel for the appellants have been considered but no merit is found in the same.

The cheque for ₹7,00,000/- signed by Mohinder Singh and in possession of respondent No. 1; legal notice got issued by respondent No. 1 to Mohinder Singh on the aforesaid cheque being dishonoured; reply given by Mohinder Singh to the legal notice; certified copy of the criminal complaint filed by the respondents on the dishonour of the cheque; copy of the order through which Mohinder Singh was admitted to bail in the criminal proceedings initiated on the dishonour of the cheque and certified copy of the order through which the afore referred criminal proceedings

abated on account of death of Mohinder Singh were duly proved by the respondents before the Trial Court. They further proved the certified copy of the jamabandi showing purchase of land by Mohinder Singh for which he had taken a loan of ₹7,00,000/- from the respondents. It was further proved that respondent No.1-Rajinder Singh had withdrawn ₹6,00,000/- from his bank account on 10.06.2006 to which he had added ₹1,00,000/- which was lying with him in cash and paid ₹7,00,000/- to Mohinder Singh as a loan. All the afore referred facts were also specifically stated by respondent No. 1 during the course of his examination in chief. He was subjected to lengthy cross-examination but he stood firm on his stand.

The appellants strongly banked on the testimony of DW-1 Rasal Singh who stated that the cheque in question had been given to him by Mohinder Singh as security as Mohinder Singh was buying land in his village. After the deal for the purchase of the land had been struck by Mohinder Singh, Rasal Singh had given the said cheque to respondent No. 1 to be returned to Mohinder Singh but the same was misused by him.

On perusal of this cross-examination Rasal Singh's testimony loses credibility as he has admitted therein that in June, 2006, through different sale deeds, Mohinder Singh had purchased twelve acres of land in his village Bhai Ladhu @ ₹5,95,000/- per acre. This fact assumes importance in the light of evidence produced and proved by respondent No. 1 that on 10.06.2006 he had withdrawn ₹6,00,000/- from his bank account for onward payment of the loan amount of ₹7,00,000/- to Mohinder Singh. Rasal Singh also admitted that he did not append his signatures on any of the sale deeds executed between Mohinder Singh and his vendor for

the land purchased by Mohinder Singh in his village. It is rather strange that Mohinder Singh did not involve Rasal Singh in the purchase of land in his village after he considered him close enough to hand over to him a blank cheque. Rasal Singh's cross-examination further goes on to reveal his admission to the effect that after the purchase of land by Mohinder Singh he never demanded the cheque back from him. This too is rather strange as it would be the normal reaction of a person to ask for a signed blank cheque handed over by him after the transaction for which the blank cheque had been given was over. Rasal Singh's admission that he himself also did not make any attempt to return the cheque also creates a dent in the appellants' story. Still further, if the cheque had been misused by respondent No.1- Rajinder Singh then the normal reaction of either Rasal Singh or Mohinder Singh would have been to approach the police or at least the respectables of the village complaining to them with regard to the alleged dishonesty on his part. Admittedly, none of such recourse was taken. It has also not been explained by Rasal Singh as to on what basis had he reposed so much faith in respondent No. 1 so as to hand over to him a blank cheque signed by someone else.

The story set up by the appellants through the testimony of DW-1 Rasal Singh is also contradicted by the appellants themselves. It has been pleaded by the appellants that respondent No. 1 was the commission agent in the purchase of land by Mohinder Singh and after the deal had been struck he wrongly filled the cheque in question and presented it. Such contradiction in the pleaded stand taken by the appellants vis-a-vis the statement made by their star witness DW-1 Rasal Singh could not be

reconciled by learned counsel for the appellants.

In view of the above, the concurrent findings of fact returned by both the Trial Court as also the Appellate Court do not warrant any interference.

No question of law much less any substantial question of law is found to arise in the present appeal.

The appeal is accordingly dismissed.

08.08.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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