IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.500 of 2016 (O&M)
Date of Decision: July 19, 2018

Kay Emm Rice & General Mills and another ...Appellants

Versus

Dalip Singh ...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.K.Arora, Advocate for the appellants.

Ms.Harjot Kaur, Advocate for Mr.N.S.Sodhi, Advocate for the caveator – respondent.

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HARINDER SINGH SIDHU, J.

The defendants have filed this regular second appeal impugning the judgments of the courts below, whereby, the suit for recovery instituted by the plaintiff – respondent has been decreed.

In the suit instituted by the plaintiff, it was pleaded that defendant No.1 is a partnership firm and defendant No.2 is its active Managing Partner. It was stated that defendant No.2 for himself and on behalf of defendant No.1 had raised a loan of Rs.2,50,000/- from the plaintiff in November, 2003. He agreed to return this amount within two months with interest @ 2% per month. On the same date, the defendants issued two cheques bearing No.650572 dated 8.1.2004 for Rs.2,00,000/- and cheque No.650571 dated 28.2.2004 for Rs.50,000/- in favour of the plaintiff. The defendant requested the plaintiff not to present those cheques for payment before May,

2004. As such, the cheques were presented for payment in May, 2004. Vide memo dated 4.5.2004 they were returned unpaid by the banker with the remarks "insufficient funds". The plaintiff sent a registered notice dated 11.5.2004 to the defendants. However, the defendants failed to pay any amount to the plaintiff. Hence, the suit.

In the written statement, filed by defendant No.2, it was pleaded that the suit was not maintainable as all the partners of defendant No.1 firm had not been impleaded. No single partner of the firm was authorised to borrow money for the firm. The plaintiff was an unlicensed money lender. Hence, the suit was not maintainable. The plaintiff had no capacity to lend such a huge loan, nor were the defendants in any need to borrow the amount. The receipt of the loan was denied.

The plaintiff appearing as PW3 reiterated the contents of his plaint. It was stated that consequent upon dishonour of the cheques, a complaint under Section 138 of the Negotiable Instruments Act had been filed against the defendants. The original cheques were placed on the criminal case file. The same had been produced by PW1 Ahlmad Indresh Singh. Certified copies of both the cheques were brought on record as Ex.P6 and Ex.P7. Plaintiff also produced the certified copy of Bank memo dated 4.5.2004 as Ex.P8, whereby, the cheques had been returned unpaid with the remarks "insufficient funds". PW4 Gurdev Singh, Senior Manager, Bank of India, Moga deposed that both cheques Ex.P6 and Ex.P7 were issued by his bank to account holder defendant No.1 having three partners Hari Om Parkash (defendant No.2) Sadhu Ram Aggarwal and Neelam Aggarwal. These cheques were presented by the plaintiff, but were dishonoured on.4.5.2004 due to insufficient funds in the account of defendant. He also admitted the Memo Ex.P8 as having been issued by the Bank.

For the defendants, defendant No.2 appeared as DW1. In cross-examination, he admitted that the original cheques, copies whereof were Ex.P6 and P7 bore the stamp of defendant No.1. He, however, denied his signatures on the same. He admitted the pendency of the criminal complaint under Section 138 of the Negotiable Instruments Act regarding dishonour of the cheques. He also admitted that both the disputed cheques were from the cheque book which was issued to defendant No.1 by their banker. He also admitted that in another suit between the parties, the matter was compromised before the High Court for a total sum of Rs.2,00,000/-. Based on the aforesaid evidence, the Ld.Trial Court concluded that the cheques Ex.P6 and Ex.P7 of the amount of Rs.2,00,000/- and Rs.50,000/- had been issued by the defendants to the plaintiff. There was a presumption that these were issued for a consideration. The cheques admittedly carried the stamp of defendant No.1. Mere denial by defendant No.2 of his signatures on the cheques could not be accepted in the absence of examination of handwriting expert or any other evidence to disprove the same. There was no evidence that defendant No.2 had no authority to raise loan on behalf of defendant No.1. The lack of authority was further belied by his admission that there were other loan transactions between the parties. Further, the mere fact that some intermittent and casual advances of money had been made by the plaintiff, was not sufficient to conclude that he was a money lender being regularly in the business of money lending.

It was also held that mere acquittal of the accused in the complaint under 138 of the Negotiable Instruments Act would not constitute a res judicata in a civil suit for recovery of money.

Thus, the suit was partly decreed. The defendants were held liable to repay the principal amount of Rs.2,50,000/- with interest @ 12% per annum from 4.05.2004 till realization of the decreetal amount.

The Ld. Lower Appellate Court has affirmed the findings of the trial court.

Findings of fact have been recorded by the courts below. Ld. Counsel for the appellants has not been able to show as to how those findings are perverse or against the evidence on record. No substantial question of arises for decision in this case.

Accordingly, the appeal is dismissed.

July 19, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No