

102.

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA-4743-2015 (O&M)**

Date of decision:20.02.2018.

PARTAP SINGH NARWAL

... Appellant

Versus

HARYANA STATE COOP AGRICULTURE AND RURAL  
DEVELOPMENT BANK LTD AND ANR

.... Respondents

**CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA**

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Present: Mr. A.S.Tewatia, Advocate,  
for the appellant.

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**HARI PAL VERMA, J.**

Appellant-plaintiff has filed the present Regular Second Appeal against the judgment and decree dated 25.05.2015 passed by learned District Judge, Panchkula, whereby his appeal against the judgment and decree dated 30.10.2014 passed by learned Civil Judge (Senior Division), Panchkula, was dismissed.

Briefly stated, the appellant-plaintiff (hereinafter referred to as "plaintiff") had filed a suit for recovery by way of damages for an amount of ₹50,000/- on account of loss suffered by him due to non-sanctioning of vehicle loan to him by the defendants (respondents herein). The plaintiff was an employee of the defendants-Bank and he retired from his service on 30.06.2013. At the time of his retirement, he was working as a Manager in the Head Office of the defendants-Bank at Panchkula. He had applied to the defendants-Bank for a car loan of ₹4 lakhs vide his loan application dated 10.07.2010, for the purchase of a second hand 'i-10' car bearing registration

No.CH04-J-2311. Along with the loan application, he (plaintiff) had submitted requisite documents i.e. agreement to sell dated 24.06.2010, affidavit and photostat copy of registration certificate of the said car. The seller of said car was Shri Arvind Kakkar, resident of House No.340, Sector 46-A, Chandigarh. For the purchase of said car, the plaintiff had paid an earnest money of ₹50,000/-to his vendor Arvind Kakkar and the balance sale consideration was required to be paid on or before 15.08.2010. As per said 'agreement' dated 24.06.2010, if the seller backs out from the deal, he shall pay double the earnest money to the purchaser. Similarly, if the purchaser refuses to purchase the car, the earnest money of ₹50,000/- paid by him to the seller shall be liable to be forfeited. Though the plaintiff had applied for a car loan on 10.07.2010, but vide letter dated 20.09.2010, the defendants-Bank communicated to the plaintiff that the receipt of earnest money of ₹50,000/- was not signed by the seller. Therefore, the plaintiff was advised to get the receipt signed from the seller Shri Arvind Kakkar. Accordingly, the plaintiff got the receipt signed from the seller and re-submitted the papers to the defendants-Bank, but despite submission of all the requisite documents by the plaintiff, the defendants failed to sanction the car loan to the plaintiff. Since the receipt of earnest money was signed by the seller on 28.09.2010, the date for payment of balance sale consideration was extended upto 31.10.2010. The plaintiff requested the defendants many a times to sanction the loan and to release him the loan amount, but it was never sanctioned and released. Therefore, Arvind Kakkar, with whom agreement to sell was executed, forfeited the earnest money of ₹50,000/- vide letter dated 01.11.2010. Hence, the present suit was filed.

On notice, defendants appeared and contested the suit by filing a joint written statement, taking various objections including concealment of facts. Though it was admitted that the plaintiff had applied for a loan of ₹4 lakhs for purchase of a second hand car vide his application dated 10.07.2010, but as his agreement to sell dated 24.06.2010 was not signed and therefore was incomplete, the defendants returned the original documents to the plaintiff on 20.09.2010 asking him (plaintiff) to re-submit the agreement after getting it signed from the party i.e. seller, who had agreed to sell his old car to the plaintiff. The plaintiff re-submitted the agreement on 28.09.2010, but it was incomplete. On scrutiny, the defendants noticed that the receipt of earnest money was signed by one Arvind Kakkar in the date of '28.09.2010', but as per the first page of agreement to sell, the payment was made on 24.06.2010. Therefore, on submission of incomplete agreement, different dates on agreement to sell and receipt of earnest money had created doubts in the mind of defendants-Bank and the same was accordingly brought to the notice of plaintiff, but he did not complete the required formalities. However, he (plaintiff) applied for a fresh loan of ₹3 lakhs for the purchase of a new 'Alto' car vide his fresh loan application dated 09.06.2011. Alongwith the application, the plaintiff also filed a copy of invoice dated 08.06.2011 of M/s Berkley Automobiles Limited. His loan application was proceeded and a loan of ₹3 lakhs was sanctioned in favour of plaintiff by the defendants vide order dated 16.06.2011. The said order of sanction was valid for three months i.e. upto 16.09.2011. But the plaintiff on the last date of its validity i.e. on 16.09.2011, applied for extension of time for a further period of three months, which was considered and extended by the defendants. In this

manner, the defendants released loan of ₹3 lakhs in favour of M/s Berkley Automobiles Limited for the purchase of a new Alto car.

From the pleading of parties, the trial Court formulated the following issues:-

- “1. Whether the plaintiff is entitled for damages to the tune of Rs.50,000/- alongwith interest, as prayed for? OPP
2. Whether the plaintiff has concealed the material facts from the Court, if so, to what effect? OPD
3. Relief.”

The suit was dismissed by the learned Civil Court with an observation that the plaintiff could not prove any such record on file whereby it is established that the defendants have consented to sanction and release a car loan to him prior to his entering into an agreement dated 24.06.2010 for the purchase a second hand i-10 car bearing registration No.CH04J-2311 from Arvind Kakkar for ₹3,50,000/-. Even otherwise, the resubmitted paper after being signed by Arvind Kakkar shows the date as 28.09.2010, but in the body of agreement to sell in question, it was mentioned that the earnest money of ₹50,000/- had been paid by the plaintiff to Arvind Kakkar on 24.06.2010. Further, the name of his (plaintiff) father was also wrongly mentioned in the loan application. With these shortcomings, the defendants were not bound to sanction the car loan to the plaintiff on the basis of his application dated 10.07.2010. Considering the fact that Arvind Kakkar with whom the plaintiff entered into an agreement for purchase of a car, during his cross-examination had categorically stated that if any earnest money was paid to him by the plaintiff, it was paid on 28.09.2010 and it is only thereafter, he signed the receipt and not on 24.06.2010 as reflected in the receipt (Ex.P4/Ex.D7). Thus, the statement of

plaintiff was falsified and the suit was dismissed vide judgment and decree dated 30.10.2014.

Aggrieved against the aforesaid judgment and decree dated 30.10.2014 passed by the trial Court, the appellant-plaintiff had filed an appeal before learned Lower Appellate Court. Learned Lower Appellate Court also dismissed the appeal vide judgment and decree dated 25.05.2015 by observing as under:-

“20. As far as payment of earnest money to the prospective seller of old car, PW-1, Arvind Kakkar is concerned, it was a matter between the appellant-plaintiff and the prospective seller and once, he applied for fresh loan to purchase new car, he is not entitled to have loan to purchase old car as well and thus, there was no negligence or malafidies on the part of the respondent-defendants in processing his earlier application to avail loan to purchase old car, on the contrary, the appellant-plaintiff himself is liable for its non-sanctioning by his own act and conduct and he was very well knowing that he can avail only one vehicle loan i.e. either to purchase old vehicle or new vehicle and once his application for loan to purchase new car was allowed and loan was sanctioned, his earlier loan application automatically stands filed. All these facts are duly admitted by the appellant-plaintiff. If it is so, no further evidence is required to say that there is no malafides or negligence on the part of the respondent-defendants, on the contrary, the appellant-plaintiff is estopped by his own act and conduct from saying so and he has also concealed true facts from the court regarding his subsequent loan.”

It is in the aforesaid circumstances, the plaintiff (appellant) has approached this Court through the instant Regular Second Appeal questioning the judgments and decrees passed by the courts below.

Learned counsel for the appellant has argued that the appellant has fully proved the case of negligence and malafide on the part of respondent-defendants. Non-sanctioning of loan by the respondent-defendants in time, had resulted in forfeiture of his (plaintiff's) earnest money paid to the seller and there is no concealment of facts on the part of plaintiff, as observed by the courts below. Plaintiff was not required to plead the sanctioning of second car loan which was subsequently availed by the plaintiff. Even the finding of the Lower Appellate Court on the point of limitation which was neither pleaded by the parties nor any issue was framed to this effect by the trial Court, deserves to be set aside as Article 72 of the Limitation Act, 1963 is not applicable in the facts of the present case. The courts below have misinterpreted the statement and cross-examination of witness Arvind Kakkar. He never stated that he received earnest money on 28.09.2010, rather has stated on oath that the earnest money for the purchase of second hand car was received on 24.06.2010 at the time of entering the agreement to sell. The agreement dated 24.06.2010 had not been read in its totality by the concerned official of the defendants-Bank intentionally so as to harass and humiliate the appellant.

The appellant has formulated the following substantial questions of law in the present appeal:-

- “a) Whether the judgment and decree of the courts below is arbitrary and unjustified?
- b) Whether the courts below have twisted the facts which has resulted into miscarriage of justice?
- c) Whether the courts below have misinterpreted the documentary evidence?”

I have heard learned counsel for the appellant.

The pleaded case of the appellant is that in order to obtain a loan, he had applied to the defendants-Bank for a loan of ₹4 lakhs vide his application dated 10.07.2010 so as to purchase a second hand i-10 car bearing registration No.CH04-J-2311. He submitted documents such as agreement to sell dated 24.06.2010 for the purchase of proposed car, along with affidavit and photocopy of registration certificate. This car was agreed to be purchased from Arvind Kakkar, resident of House No.340, Sector 46-A, Chandigarh. Plaintiff had paid ₹50,000/- as earnest money to his vendor Arvind Kakkar and the balance sale consideration was to be paid on or before 15.08.2010. It is a matter of record that vide letter dated 20.09.2010, the defendants had communicated to the plaintiff that the receipt of earnest money of ₹50,000/- was not signed by the seller. Therefore, the plaintiff was advised to get the receipt signed from the seller-Arvind Kakkar. Accordingly, the same was got signed by the seller on 28.09.2010 and the date for payment of balance sale consideration was extended upto 31.10.2010. But as the agreement dated 24.06.2010 was unsigned, which was treated as incomplete, and thus the documents were returned to the plaintiff on 20.09.2010 with an advice to re-submit the agreement after getting it signed from the party i.e. Arvind Kakkar. However, on scrutiny, it was found that the receipt of earnest money was signed by Arvind Kakkar in the date of 28.09.2010, whereas as per first page of agreement to sell, the payment was made on 24.06.2010. Therefore, no fault can be fastened on the defendants that there was delay in sanctioning the loan. Whosoever intends to avail a loan is bound to submit/furnish necessary documents without any ambiguity. When the plaintiff had failed to complete the

formalities regarding the first loan and at the same time, he applied for a fresh loan of ₹3 lakhs for purchase of a new Alto car vide his application dated 09.06.2011, it led to a conclusion that the earlier application submitted pursuant to the agreement dated 24.06.2010 was not complete and the plaintiff was very well in knowledge of this fact. Moreover, Arvind Kakkar, who had agreed to sell his i-10 car vide agreement to sell dated 24.06.2010, during his cross-examination had stated that if any earnest money was paid to him by the plaintiff, the same was paid on 28.09.2010 and not on 24.06.2010. Thus, the documents submitted before 28.09.2010 were incomplete and, therefore, loan could not have been sanctioned on the basis of incomplete papers. Noticing the fact that the documents were incomplete, the plaintiff had applied for a fresh loan of ₹3 lakhs, vide his application dated 09.06.2011, for purchase of a new Alto car, which was sanctioned to him by the defendants vide order dated 16.06.2011. Thus, there was no fault of the defendants in not sanctioning the loan on the basis of application dated 10.07.2010.

Apart from above, it is an admitted fact that the plaintiff applied for the car loan on 10.07.2010 while working as an employee of the defendants-Bank along with documents and the defendants-Bank had processed his application. Since there were certain shortcomings in the application regarding receipt of earnest money, vide communication dated 20.09.2010, respondent-defendants had called upon the plaintiff to remove the objections as raised in the application, as the receipt of earnest money of ₹50,000/- attached by the appellant-plaintiff was not signed by the seller of the car. Even the name of the father of the plaintiff and date of joining was wrongly mentioned in the application. In fact the plaintiff has claimed

damages for non-sanctioning/delayed sanctioning of loan without giving serious thought to his own laxity. Even the suit filed for the relief i.e. suit for recovery of damages, was barred by limitation. Article 72 of the Limitation Act, 1963 provides limitation for filling a suit for damages which reads as under:-

| Description of suit                                                                                                                                                                | Period of limitation | Time from which period begins to run |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------|
| “72. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. | One year             | When the act or omission takes place |

In the case in hand, the plaintiff had filed a suit on 10.07.2013 on the basis of cause of action which accrued to him in the month of September/October, 2010 i.e. about 3 years after the cause of action having been arisen, whereas under Article 72 of the Limitation Act, the limitation for filing for suit for damages is one year from the date of cause of action. The question of limitation is a mixed question of laws and facts and even if the issue of limitation has not been dealt with by the Civil Court, the Lower Appellate Court was not debarred from dealing with such a plea. If the suit is filed beyond a period of limitation as prescribed in the Act, the same is liable to be dismissed on this score alone. The Lower Appellate Court has considered the point of limitation in paragraph 21 which reads as under:-

“21. One more aspect which falsifies the case of the appellant-plaintiff is that the case is time barred also as it is admitted fact that this suit has been filed on 10.07.2013 on the basis of a cause of action which arose to the appellant-plaintiff in the month of September/October, 2010 and then limitation to file such a case of damages is only one year from the alleged date of cause of action. Admittedly the suit is only a suit for damages on account of tort of negligence on the part of the respondent-defendants. If it is so, the respondent plaintiff was

required to file the suit within one year of the publication of libel as per the period of limitation provided under Article 72 of the Limitation Act, 1963, which that for filing a suit for damages for doing or omitting to do an act alleged to be in pursuance of any enactment in force for the time being, the period of limitation is one year from the date when the act or omission takes place.”

Since the plaint is not filed within a prescribed period of limitation, the appeal is liable to be dismissed on this score as well.

No substantial question of law arises in the present regular second appeal.

No other argument is raised.

Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

**(HARI PAL VERMA)**  
**JUDGE**

20.02.2018  
sanjeev

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|----------------------------|--------|
| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |