IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.6134 of 2015 (O&M)
Date of decision : March 20, 2018

Ashok Kumar and others .... Appellants

Versus

Anita Rani .... Respondent

2. RSA No.130 of 2016 (O&M)
Date of decision : March 20, 2018

Ashok Kumar and others .... Appellants

Versus

Anita Rani .... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate for the appellants.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Dawar, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

By this single judgment, I shall dispose of two regular second appeals bearing RSA No.6134 of 2015 and 130 of 2016, between the same parties.

Impugned in the present regular second appeals are two separate judgments dated 18.03.2015 passed by learned District Judge, Chandigarh, vide which judgment and decree dated 23.01.2013 and 22.07.2013, respectively, passed by learned Civil Judge (Jr. Divn.), was set aside and two separate appeals were allowed and suit of the plaintiff-respondent was decreed for ₹54,50,000/- and ₹5,50,000/- respectively along with interest @ 7.5% per annum from due date till the decree of the suit. Further interest @ 6% per annum from the date of decree till its realization was also allowed.

First the facts involved in the RSA No.130 of 2016 are reproduced as under:

Mrs. Anita Rani, plaintiff-respondent filed a civil suit No.15592, dated 03.08.2007 against her husband's brother-in-law (sister's husband) Ashok Kumar, her husband's sister Mrs. Vijay and their son Mr. Arun Goyal (appellants herein) for recovery of ₹67,31,000/-. It was stated that defendant No.2 is the sister of Narinder Singhal (husband of the plaintiff). Defendant No.3 is the son of defendant Nos.1 and 2. The defendants were carrying on the business of building material under the name and style of Prem Chand Amar Chand, Show-room 11, Sector 26, Chandigarh. Plaintiff's family was engaged in rice trading business at Kurukshetra. In the year 2001-2002, defendant No.1 projected that at present the real estate business is much more profitable. The husband of the plaintiff agreed to do property dealing business with the defendants in partnership as suggested by defendant No.1. Defendant No.1 obtained signatures of the plaintiff on some blank papers on the pretext that it would be difficult for them to shuttle time and gain between Chandigarh and Kurukshetra and money may be required urgently at any time for real transactions; the plaintiff and her son were maintaining account with ICICI Bank, Sector 9 D Branch, Chandigarh and defendant Nos.1 and 2 were also having bank account in the same branch of ICICI Bank. Plaintiff and her son had to keep substantial amount in their bank account. Plaintiff, her son and husband were not use to check the bank account regularly. In March 2016, plaintiff and her husband went to the bank to check the account. There they came to know that an amount to the tune of ₹54,50,000/- was withdrawn on different dates leaving behind the nominal balance. It was stated that one cheque bearing No.448877, amounting to ₹25,00,000/- alleged to be dated 30.12.2005, which was not having signatures of the plaintiff. The said cheque has been signed by defendant No.3 as by forging the signatures of the plaintiff. Another sum of ₹9,50,000/- was withdrawn on 09.05.2005, as per cheque bearing No.448876 and a sum of ₹20,00,000/- was transferred at the request of the plaintiff before 27.08.2005. The plaintiff was never informed that these papers regarding the said transfer have been sent to Delhi. The plaintiff claimed that she had never issued cheque No.448876, dated 09.05.2005 and 448877, dated 30.12.2005 nor she issued any authority letter to transfer ₹20,00,000/- on 27.08.2005. The blank papers signed by the plaintiff were misused. In this way, the defendants withdrew a total sum of ₹54,50,000/-.

In regular second appeal, a civil suit No.15643/07, dated 02.08.2007, while stating the abovenoted facts, it was stated that defendants borrowed a sum of ₹10,50,000/- and the same was paid vide cheque bearing No.459745, dated 18.11.2003, in the name of the defendants. The defendants did not repay the said amount. On 07.08.2006, the defendants returned a sum of ₹5,00,000/- and assured to return the remaining amount of ₹5,50,000/- within six months but they did no repay the same.

In the written statement in both the suits, defendants took identical plea. They stated that the plaintiff and the defendants started doing real estate business since 2001-2002 and purchased many properties jointly, which were sold later on. The plaintiff had issued cheques dated 09.05.2005 for ₹9,50,000/- an cheque dated 30.12.2005 for ₹25,50,000/-. The said amount was invested by the plaintiff in the properties in order to run property dealing business. The plaintiff wrote a letter dated 27.08.2005, vide which she had requested the bank to transfer the amount of ₹20,00,000/- in the account of the defendants. Sulabh Singla son of Narinder Singla and the plaintiff on his behalf as well on behalf of the plaintiff gave affidavit dated 08.03.2006 that out of the aforesaid amount of cheques, ₹30,00,000/- was given put of love and affection to Ashok Kumar and others and there is no transaction between them. The bank after comparing the signatures of the plaintiff and her son cleared those cheques and the amount has been rightly withdrawn by the defendants.

It was further pleaded that the defendants had settled their accounts, pertaining to sale, purchase of the properties jointly as well as other properties. A sum of ₹5,00,000/- was paid to the plaintiff on 07.08.2006 in full and final settlement for her claim through cheque dated 07.08.2006. The said compromise was arrived with the intervention of Sh. Satish Kumar son of Om Parkash, Sh. Prem Raj Aggarwal son of Dev Raj Aggarwal and Sh. O.P. Gupta son of Raghu Nath Gupta. The plaintiff accepted the said cheque for ₹5,00,000/- and all the accounts have been settled.

From the pleadings, following issues were framed each in Civil

Suit No.15592, dated 03.08.2007 and Civil Suit No.15643, dated 02.08.2007, following issues were framed:

> *"1. Whether the plaintiff is entitled for the recovery along with interest as claimed for? OPP*
> *2. Whether the suit is not maintainable? OPD*
> *3. Relief."*

After recording the evidence of both the parties and hearing the arguments, the learned Civil Judge (Jr. Divn.), Chandigarh, vide two separate judgments dated 22.07.2013 and 23.01.2013 respectively dismissed both the suits. However, the findings were reversed in appeal.

It is in this way, both the present regular second appeals have been filed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that out of the disputed amount, a sum of ₹55,00,000/- was paid to the plaintiff in terms of the order passed by this Court on September 11, 2007 passed in a petition for grant of anticipatory bail with direction that a demand draft shall be released to the complainant (plaintiff-respondent in this case) without prejudice to respective legal rights. It was further directed that if the plaintiff (complainant) failed to substantiate his claim. The Civil Court shall direct the refund thereof along with interest at suitable rate. The amount was released on furnishing surety.

In both the cases, the following payments are involved:

1. Cheque No.448876, dated 09.05.2005 for ₹9,50,000/-
2. Cheque No.448877, dated 30.12.2005, for ₹25,00,000/-
3. A transfer of ₹20,00,000/- on 27.08.2005 on the

written request of the plaintiff.

4. The payment of ₹10,50,000/-, vide cheque No.459745, dated 18.11.2003.

Regarding the cheques bearing Nos.448876 and 448877, it is stated that these cheques were never issued by the plaintiff and signatures of the plaintiff have been forged thereon. The same is the plea regarding the transfer request for ₹20,00,000/-, dated 27.08.2005. However, regarding the fourth cheque of ₹10,50,000/-, it is stated that it was paid as loan to the defendants.

The plea of the defendants is that the said cheques were issued on account of property dealing business and cheque Nos.448876 and 448877 were in fact signed by the plaintiff and the authority letter was also singed by the plaintiff.

First of all, this Court is required to determine whether there is forgery of the said cheques and letter of authority?

There is overwhelming evidence on file to show that the said cheques and authority letter were, in fact, issued by the plaintiff. The letter (Annexure P-11) written by the ICICI Bank on 09.11.2006 to the S.H.O., Police Station Sector 3, Chandigarh, for lodging the FIR against plaintiff-respondent No.1 Anita Rani, shows that a complaint was made that three cheques bearing Nos.475804, dated 31.03.2005 for ₹9,50,000/- for self, cheque bearing No.448876, dated 09.05.2005 for ₹9,50,000/- and a cheque bearing No.448877, dated 30.12.2005 for ₹25,000/- in favour of Arun Goyal were submitted to the bank. The signatures on these cheques were not matching as per their record, but he being the high networth customer, the cheques were honoured on the telephonic confirmation by him that he will ratify the same by providing a written statement for ratification of the same and the same was given on 02.01.2006.

It was further complained to the police that on Saturday 04.11.2006, Mrs. Anita Rani along with her husband Mr. Narinder Singhal approached the ICICI Bank and asked the photocopy of the ratification letter, which was submitted by the customer. The same was provided to them by the bank staff. However, Mr. Narinder Singhal again visited their branch in Sector-9D, Chandigarh, on Wednesday 03.11.2006 and asked for the original copy of the ratification letter. Since, the account holder was not present, the same was refused by the bank staff. However, again Smt. Anita Rani along with her husband Mr. Narinder Singhal appeared before the branch official Ms. Harmeet Kaur and asked for the original letter as she wants to check the authenticity of the letter. Firstly, she refused to hand over the same to them as it is a bank document but the lady (plaintiff) insisted her that she just wants to have a look at it. The bank staff made the lady to see the letter on the counter only. However, the lady took the advantage of the rush at the counter and with a malafide intention took away the letter with her and moved out the branch premises. Therefore, the prayer was made for registration of the FIR against Mrs. Anita Rani. Further, letter Ex. D-1, bearing the signatures of the plaintiff and her son, namely Sulabh Singla. vide letter dated 02.01.2006, confirmation to the bank that they are jointly operating the account No.001301040927 in their branch for the last about three years, they informed the bank that they honoured the confirmation of these three cheques bearing Nos.475804, 448876 and 448877. There is no dispute regarding first cheque No.475804 regarding which the signatures were not matching as per bank record and confirmation was sought and which was honoured on the confirmation by the customer and regarding which confirmation letter was submitted. The Ex. D-2 is also a request duly singed by the plaintiff and her son Sulabh Singla for transfer of a sum of ₹20,00,000/- to the given account.

Therefore, it is established that the said cheques were issued by the plaintiff and her son Sulabh Singla and the confirmation was also sent later on to the bank.

It also comes out that the account from which the cheques were issued and transfer was requested, is in the name of the plaintiff and her son Sulabh Singla, who is not the co-plaintiff in this case.

Now, when the evidence of the parties is scanned, it comes out that Narinder Singla, husband of the plaintiff has affirmed the averments made in the plaint. He has stated that there was a joint bank account in the name of Anita Singla and Sulabh Singla in ICICI Bank, Sector-9D, Chandigarh. He further stated that some blank papers were got signed from him, his wife Anita Singla and son Sulabh Singla. Some papers were got singed separately and some were got signed jointly. He claimed that those blank papers have been misused. He further deposed that two property dealings were done with the defendants i.e. one show-room No.233, Sector 20, Panchkula and another show-room No.214, Sector 14, Panchkula, in which both the parties invested a sum to the extent of 50% each. The witness also purchased some property from the defendants as per registered deed at Zirakpur as well as at Panchkula. He admitted that during the pendency of the case, his wife received a demand draft of ₹55,00,000/-.

Anita Rani, plaintiff also deposed on the same line. During her cross-examination, she stated that she cannot tell how many cheques were issued by her to advance the amount of loan. She denied her signatures on the letter dated 27.08.2005. She has admitted that she along with her son Sulabh Singla had a joint bank account in ICICI Bank, Sector 9D, Chandigarh. She admitted that she along with her son Sulabh Singla and defendants used to do joint business for sale and purchase of property, which had been sold jointly by them **but till date the accounts have not been settled between them**. She stated that she started doing business of sale and purchase of property with the defendants since the year 1991; again she said that in the year 2002. She stated that she had not advanced the loan of ₹67,31,000/- to the defendants personally but the loan was advanced by her son Sulabh Singla. Her son had not filed any suit against the defendants. She also denied the compromise. However, she admitted that a joint property i.e. SCO No.214, Sector 14, Panchkula was purchased jointly. She went to the extent of denying her signatures on the complaint dated 02.08.2007. She also could not tell whether the reply dated 02.12.2007/application 06.12.2007 bears her signatures or not. She stated that her signatures on the document dated 02.08.2007 looks like hers. She also stated that the signatures on the affidavit dated 14.03.2008 also look like hers. She could not confirm those signatures.

Strangely enough, Sulabh Singla son of the plaintiff, who was having joint account with her mother in ICICI Bank, Sector 9D, Chandigarh, from where the cheques were issued and to which the authority to transfer was given did not appear in the witness box to support her mother nor he appeared to deny the affidavit Ex. D2, vide which ₹30,00,000/- were stated to have been given to the defendants out of love and affection. The said affidavit was sworn by said Sulabh Singla on his behalf and on behalf of her mother Anita Rani.

Withholding of the evidence of Sulabh Singla, entails adverse inference against the plaintiff.

On the other hand, the defendants have examined two witnesses, namely O.P. Gupta and Prem Raj Aggarwal, who have stated that a compromise was effected between the parties on 07.08.2006 and the accounts were fully and finally settled and a sum of ₹5,00,000/- as full and final settlement was paid to the plaintiff, vide cheque dated 07.08.2006 and the said cheque was encashed. The witnesses were briefly cross-examined and it was never put to them as to why they will make such a false statement. They were not asked as to where and when the compromise took place and what kind of accounts were settled.

From the evidence of the parties, it is clear that there were some business transactions between the parties; that both the parties were running joint business of property dealing. Narender Singla, husband of the plaintiff and Sulabh Singla, son of the plaintiff were also party to the said business dealings. Some properties were purchased and then sold.

The case of the plaintiff in civil suit No.15592 of 2007 is that two cheques were not issued and have been forged by the defendants and that the authority to transfer of ₹20,00,000/- was also forged. It is not the case of the plaintiff that the said money was advanced as a loan.

From the evidence, it is clear that the plaintiff and her son had confirmed the said transactions to the bank, stating that cheques and the aforesaid authority are genuine. Though, at the later stage, plaintiff also tried to steal the said authority from the said bank. For this, the bank moved to the police to lodge the FIR against the plaintiff. Therefore, it is apparent that there were business transactions between the parties. Untill or unless the accounts of the parties are examined, it cannot be establised as to what amount is due from the defendants to the plaintiff or vice versa. The civil suit No.15592 of 2007 is a simple suit for recovery, stating that the said two cheques for ₹9,50,000/- and ₹25,00,000/- respectively were not issued by the plaintiff and have been forged and the authority to transfer of ₹20,00,000/- has also been forged. Therefore, recovery is sought.

The evidence otherwise shows that said money was paid to the defendants as a part of the business transaction and as stated above, until and unless the business accounts are settled, it cannot be known that as to what amount is due from the defendants to the plaintiff. As pointed out earlier, Sulabh Singla, son of the plaintiff, who was also part of the business dealing was not produced. Sulabh Singla had sworn an affidavit Ex.D2, stating that ₹30,00,000/- have been given to the defendants on account of love and affection. The said affidavit was sworn by him on his behalf and on behalf of her mother Anita Rani. Sulabh Singla had not appeared to deny that his mother never authorized him and to explain the circumstances under which, the said affidavit was given by him.

It is quite possible that in order to settle the accounts, ₹30,00,000/- have been shown to be as gift of love and affection to fulfil some legal formalities, regarding one or the other department, where such accounts are examined.

Further, defendants had produced two witnesses, namely O.P. Gupta and Prem Raj Aggarwal, who have specifically asserted that accounts between the parties were fully and finally settled on 07.08.2006 and after adjustment and settlement of accounts, ₹5,00,000/- were paid to the plaintiff as full and final settlement. Cheque dated 07.08.206 regarding the same was issued and encashed.

As pointed out earlier, only brief cross-examination of the aforesaid witnesses are done, which is insufficient to rebut the claim of the said witnesses O.P. Gupta and Prem Raj Aggarwal regarding the settlement. Therefore, their evidence has to be accepted that the business accounts between the parties were settled on 07.08.2006 and the cheque of ₹5,00,000/- was paid to the plaintiff, which has been enashed. The encashing of the said cheque has not been denied, though, in the civil suit No.15643 of 2007, it is stated that the said amount was on account of part of return of the payments of ₹10,00,000/- paid on 02.08.2007.

In view of what has been discussed above, this Court come to the conclusion that accounts between the parties were finally settled on 07.08.2006 and ₹5,00,000/- as full and final settlement were paid and the said payment is credited by the plaintiff to her account. The findings of lower appellate Court are found to be illegal and pervere and are hereby set aside. Therefore, in both the suits, the plaintiff is not entitled to recover the amount as claimed for. The findings on issue No.1 in both the suits are, accordingly, recorded.

As a result thereof, the judgments and decrees dated 22.07.2013 and 23.01.2013 respectively passed by learned Civil Judge (Jr. Divn.), Chandigarh, are restored and two separate judgments and decrees dated 18.03.2015 passed by learned Addl. District Judge, Chandigarh are set aside.

It is further ordered that ₹55,00,000/- paid to the plaintiff in terms of the order passed by the Court in anticipatory bail application through demand draft shall be refunded to the defendants/appellants with interest @ 7% per annum from the date of receipt of said demand draft till repayment.

As such, both the aforesaid regular second appeals are allowed.

Since, the main appeal is allowed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 20, 2018
sarita

Whether speaking / reasoned Yes

Whether Reportable: No