IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1529 of 2018 (O&M)
Decided on : 15.03.2018

M/s Tula Ram Devi Parsan

... Appellant

Versus

M/s Kanhaiya Lal Parveen Kumar and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Munish Kumar Garg, Advocate for the appellant.

<u>G.S. Sandhawalia, J. (Oral)</u>

<u>CM-4050-C-2018</u>

Application for condoning the delay of 20 days in re-filing the present appeal has been filed.

In view of the averments made in the application, duly supported by the affidavit of the counsel and in view of the nominal delay, the same is allowed. The delay of 20 days in re-filing the appeal is condoned.

CM stands disposed of.

<u>Main appeal</u>

The defendant is in appeal against the concurrent findings recorded by the Courts below, whereby the suit of recovery has been allowed of ₹2 lakhs.

Counsel for the appellant has argued that suit had been filed beyond the period of limitation, as it was filed on 03.02.2012 and the second cheque of ₹7 lakhs had been advanced to the appellant on 02.02.2009.

A perusal of the paper-book would go on to show that the case of the respondent-plaintiff was that two cheques dated 30.01.2009 of ₹5 lakhs and another cheque dated 02.02.2009 of ₹7 lakhs had been paid to the appellant drawn on State Bank of Patiala and which had been encashed. The amount of ₹10,50,000/- had been re-paid in installments to the plaintiff on various dates and last was on 31.03.2009.

The amount claimed out of the ₹12 lakhs advanced was ₹1,50,000/- as ₹10,50,000/- had been paid back and a legal notice had also been sent, but payment had not been made, leading to the filing of the suit. The cause of action, thus, would arise after the last payment as such made on 31.03.2009 and not when it had been advanced on 02.02.2009, which was not a relevant date as such to calculate the limitation.

The defence of the appellant-defendant was denial of borrowing any amount and that there was joint purchase of *Bajra* and loss had been suffered by the parties. Whatever amount was given by the plaintiff had been given to Om Trading Company and paid through the plaintiff and defendant had never borrowed any money from the plaintiff.

The trial Court recorded that no evidence was produced by the defendant in defence and nobody from Om Trading Company as such had been examined. The documents Ex.D1 to D15 had not been put to the plaintiff or any of his witness and, therefore, they were not proved. Accordingly, suit was decreed alongwith the entitlement to recover the suit amount alongwith interest @ 6% per annum from the date of filing of the suit.

The Lower Appellate Court, accordingly, noticed that the appellant-defendant had been advanced the amount through cheques and amount of ₹1,50,000/- was outstanding in the account books, as ₹10,50,000/- had been returned back. The defence of the "Bilties" and the goods sent in the name of the plaintiff, accordingly, was rejected.

Thus, sufficient evidence was brought on record by the plaintiff and that the transactions had taken place through bank transfer, and the appellant has failed to show the return of the balance ₹1,50,000/-, which was the basis of the filing of the suit. The defence of the return of the amount could not be substantiated and a finding of fact has been recorded that there was an outstanding for which the suit had been decreed. The respondent-plaintiff was honest enough to only claim what was due.

Accordingly, the recovery of amount of ₹1,50,000/- alongwith interest was justified and the factual findings which have been recorded by the courts below do not suffer from any infirmity, which would warrant interference by this Court in regular second appeal.

Resultantly, there is no merit and the regular second appeal is, accordingly, dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

MARCH 15, 2018
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*