In the High Court of Punjab and Haryana at Chandigarh

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CM Nos.5046-C and 5047-C of 2017
and
R.S.A. No.2078 of 2017 (O&M)

.....

Date of decision:30.5.2018

Sheela Rani and others

.....Appellants

v.

Bagga Singh through LRs and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Parminder Singh, Advocate for the appellants.

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Inderjit Singh, J.

CM No.5047-C of 2017:

For the reasons mentioned in the civil miscellaneous application, the deficiency in Court Fee has been made good.

The civil miscellaneous application is allowed accordingly.

CM No.5046-C of 2017:

For the reasons mentioned in the civil miscellaneous application, the delay of 73 days in re-filing the appeal is condoned.

The civil miscellaneous application is allowed accordingly.

R.S.A. No.2078 of 2017:

This regular second appeal has been filed by Sheela Rani, Pawan Kumar and Geeta Rani-appellant/defendants against Bagga Singh (now deceased) through his LRs Kuldeep Kaur, Parminder Kaur and Navjot Kaur-respondents/plaintiffs challenging the impugned judgment and decree dated 4.10.2016 passed by the learned Additional District Judge, Patiala, vide which the appeal filed by the defendants against the impugned judgment and decree dated 16.2.2016 passed by the learned Additional Civil Judge (Senior Division), Nabha, decreeing the suit of the plaintiffs, has been dismissed.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that Bagga Singh (now deceased) through his LRs filed a suit against Narayan Dass, Ramesh Kumar, Pawan Kumar, Sheela Devi and Geeta Rani-defendants for recovery of ₹7,82,425/-. The case of the plaintiff is that on 5.4.2008, Fateh Chand took a cash loan of ₹5,95,000/- from the plaintiff in the presence of Dr. Harchand Singh and Surinder Singh and to discharge his debt liability, said Fateh Chand issued cheque No.874294 dated 5.4.2008 for ₹5,95,000/- in favour of the plaintiff to be drawn at Punjab and Sind Bank, Branch Guru Nanak Nagar, Tripuri, Patiala out of his saving bank account No.1174. Said Fateh Chand orally agreed to pay interest @ 1.50% per month on the above said borrowed amount and also agreed to pay the borrowed amount as and when demanded by the plaintiff alongwith interest. But he did not pay any amount out of the borrowed sum or interest. On 6.9.2008, the plaintiff presented the aforesaid cheque for encashment before his banker i.e. the Patiala Central Cooperative Bank Limited, Branch Agoul, where the plaintiff was maintaining his account. The bank of the plaintiff sent the said cheque for clearance which was dishonoured due to the reason "insufficient funds".

Legal notice was also given to said Fateh Chand to make the payment. A complaint was filed under Section 138 of the Negotiable Instruments Act,1881 also but the proceedings were abated due to death of Fateh Chand.

Thus, the present suit has been filed against his legal heirs, who are bound to pay the liabilities of Fateh Chand, as they have inherited his property.

On notice of the suit, defendants No.1 and 2 appeared through their counsel and filed detailed written statement wherein it is denied that on 5.4.2008, Fateh Chand took a cash loan of ₹5,95,000/- from the plaintiff in the presence of the persons as alleged or to discharge his debt and liability said Fateh Chand issued a cheque as alleged. It has been further pleaded that Surinder Singh obtained blank signed cheque from Fateh Chand, father of the answering defendants, as security. Surinder Singh asked said Fateh Chand that he will return the blank signed cheque to him after the execution and registration of the sale deed. Said Surinder Singh got executed sale deed No.13572 dated 29.2.2008 in favour of his wife Paramjit Kaur and receipt/writing was also executed by said Surinder Singh in which it is clearly mentioned that he will be bound to return the cheque in question bearing No.874294 to Fateh Chand, father of the answering defendants and now nothing remains outstanding. It has also been stated that Surinder Singh got filed the false suit from Bagga Singh against the defendants and said Surinder Singh had played fraud.

From the pleadings of the parties following issues were framed on 23.8.2014:-

"1. Whether on 5.4.08 the defendant executed took a cash loan of ₹5,95.000/- from the defendant and in order to discharge his legal liability issued cheque No.874294 of 5.2.08? OPP.

2. Whether the plaintiff is entitled to interest. If so at what rate? OPP.

3. Whether the suit is not maintainable? OPD.

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.

5. Relief."

In order to prove his case, the plaintiff examined Rakesh Kumar Sharma as PW-1, Kuldeep Kaur PW-1 (doubly numbered), Pawan Kumar PW-2, Kirpal Singh PW-3, Surinder Singh PW-4, Balwinder Singh PW-5 and closed his evidence.

On the other hand, defendants examined Ramesh Kumar DW-1. Thereafter, the evidence of the defendants was closed by order.

The learned Additional Civil Judge (Senior Division), Nabha, vide impugned judgment and decree dated 16.2.2016 decreed the suit of the plaintiff for recovery of ₹5,95,000/- from the LRs of deceased Fateh Chand along with interest @9% per annum from 5.4.2008 till the date of the judgment and with future interest @6% per annum from the date of judgment till actual realization. It was also held by the lower Court that the plaintiff is entitled to recover the amount from the LRs of deceased Fateh Chand only to the extent that they have inherited the estate of deceased Fateh Chand. Aggrieved from this judgment and decree, an appeal was filed before the learned District Judge, Patiala and the learned Additional District Judge, Patiala, vide judgment and decree dated 4.10.2016 filed by

Sheela Rani, Pawan Kumar and Geeta Rani which was also dismissed. Aggrieved against this judgment and decree, the present regular second appeal has been filed.

From the record, I find that the findings given by the Courts below are correct as per evidence and law. The reasoning given by the learned Courts below, in no way, can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Courts below and as to which material evidence has not been considered by the Courts below. The finding of fact has been concurrently given by both the Courts below. No substantial question of law arises in the present regular second appeal.

The Additional Civil Judge (Senior Division), Nabha, held that it is a specific case of the defendants that Surinder Singh had obtained blank signed cheque from Fateh Chand as security and that he executed a writing that he will be bound to return cheque in question i.e. cheque bearing No.874294. The learned Court below held that it is thus apparent that the signatures of Fateh Chand on cheque in question in fact had been admitted. If the case of the defendants is that the cheque in question was issued as blank one, it was incumbent upon the defendants to prove by way of cogent evidence that the cheque had been issued to Surinder Singh by Fateh Chand as security. But there is no cogent evidence on record to prove the defendants' version. Further more, the defendants were allowed to prove the compromise dated 10.3.2008 by way of secondary evidence subject to proof of execution, existence and loss. The defendants examined Ramesh Kumar, who appeared as DW-1. In cross-examination DW-1 admitted that on Mark-D.1 no name of any witness is mentioned. He also admitted that he did not see the original of Mark-D.1. He further deposed that he did not get the copy of Mark-D.1 prepared himself. He further admitted that its copy was not prepared in his presence. He further deposed that he does not know that as to from which the copy has been prepared as Mark-D.1. He further admitted that the signatures of Surinder Singh appearing on Mark-D.1 were not appended in his presence. DW-1 further in his cross-examination stated that he does not know that his father had issued cheque in favour of Surinder Singh after receiving a sum of ₹5,95,000/-. The Court below held that except the bald statement of DW-1, Ramesh Kumar, no evidence has been produced by the defendants to prove the version that the cheque was given blank as security to Surinder Singh, whereas the signatures of Fateh Chand are admitted.

On the other hand, the plaintiff had proved his case by producing the witnesses. The findings of fact given by the lower Court and by the first appellate Court are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. The judgments and decrees passed by the Courts below are correct as per law and do not require any interference from this Court and the same are upheld. No question of law much less substantial question of law arises in this regular second appeal.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

As the main appeal is decided, therefore, civil miscellaneous application, if any, also stands disposed of.

May 30, 2018.

(Inderjit Singh)
Judge

hsp

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