

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

RSA No.3151 of 2017

Date of Decision.23.02.2018

Dr. Rakesh Garg

.....Appellant

Vs

State of Haryana and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anurag Jain, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent finding of fact whereby the suit claiming damages of ₹1 lac has been dismissed by the trial Court and upheld by the lower Appellate Court.

The appellant-plaintiff instituted the suit for damages on the premise that on 24.08.2008, the appropriate Authority under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter called as “PC&PNDT Act”) and the Rules framed thereunder, inspected the Ultrasound Centre and found that the appellant was not violating any provisions of the aforesaid Act. In other words, no exercise of sex determination of foetus was done. However, the addresses of three females were incomplete but mobile numbers were available on the forms. The premises were sealed on 24.08.2008 and ultimately show cause notice was received on 10.09.2008. The same was replied by producing evidence but yet the appropriate Authority ordered for sealing of the ultrasound machine for 30 days w.e.f. 08.10.2008 to 07.11.2008. Since the Department could not find any material on record against the appellant, he instituted the aforementioned suit.

Upon notice, the defendants contested the suit by raising the plea of non-maintainability of the suit, much less, other customary pleas.

On merits, it was stated that the file maintained by the appellant was incomplete and irregularity as per the provisions of PC&PNDT was found in the ultrasound machine and it is in that background of the matter, the machine was sealed.

The appellant-plaintiff in support of his case examined Deepak Kumar as PW1, Dharampal as PW2, plaintiff himself as PW3 and tendered affidavit Ex.PW3/A and closed the evidence. On the other side, defendant No.4 examined himself as DW1 and tendered his affidavit Ex.DW1/A, Dr. Pushpa Lata as DW2, who filed her affidavit as Ex.DW2/A and closed the evidence. The trial Court on preponderance of the evidence dismissed the suit and the appeal against the same also met with the same fate.

Mr. Anurag Jain, learned counsel appearing on behalf of the appellant submits that once no prima facie material was proved against the appellant-plaintiff, much less, violation of the aforementioned Act, there was no occasion for the Authorities for sealing the premises, which was basically on the ground as their illegal demands were not adhered to. In these circumstances, the plaintiff was compelled to institute the suit for damages and entire evidence had been brought on record to establish the fact that the appellant-plaintiff had not been able to earn his livelihood from the ultrasound machine for more than one month, therefore, damages were sought, thus, there is illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. The foremost evidence which was required to be led on behalf of the appellant was the testimony of the patients whose addresses were

incomplete but as per record, mobile numbers were available to depose in his favour in order to substantiate the claim of damages. Having failed to do so, rightly so, the Courts below did not accept the pleadings, much less, the evidence brought on record as the same were lacking. In the suit for damages, there has to be direct and cogent evidence and not corroborative, therefore, the appellant-plaintiff failed to discharge the onus as per Section 101 of the Indian Evidence Act.

In view of the aforementioned, I am of the view that the opinion expressed by both the Courts did not call for interference as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 23, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No