IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-10545-C-2017 in/and
RSA No.4091 of 2017
Date of decision:-04.10.2018

Surjit Singh

........Appellant

versus

Sawinder Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Ms. Jasneet Mehra, Advocate for the appellant.

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TEJINDER SINGH DHINDSA, J.

Surjit Singh, filed a suit for rendition of accounts against Sawinder Singh, defendant. In the suit the defendant set-up a counter-claim for recovery of Rs.87,710/-. The Trial Court vide judgment and decree dated 03.10.2015 dismissed the suit of the plaintiff. Counter-claim for recovery filed by the defendant was accepted. Plaintiff preferred a civil appeal which has been dismissed vide judgment dated 20.09.2016, passed by the learned District Judge, Amritsar and thereby affirming the judgment and decree of the Trial Court.

Resultantly, plaintiff/appellant Surjit Singh is in second appeal before this Court.

Counsel for the appellant has been heard at length and pleadings on records have been perused.

Brief facts of the case are that the suit for rendition of accounts was instituted on the averments that the plaintiff and defendant were doing business jointly of dealing in junk and from a rented shop at Nawan Pind, Amritsar. Certain differences arose between the parties and on account of which the rented shop was vacated. Since plaintiff did not have any available space, defendant took away all the junk articles/goods, mostly of iron to his house and had agreed to make a settlement subsequently. Plaintiff asserted that the defendant had sold/disposed of all the articles and instead of settling accounts pertaining to the dissolved business/partnership, is claiming money from him on the basis of some documents which were never executed. Plaintiff asserted that the documents of agreement/compromise, if any, were the outcome of fraud and misrepresentation and as such would have no sanctity in law.

Suit was contested by the defendant by taking a stand that the plaintiff was only engaged in a street to street kabaria business whereas defendant had a junk dealership business. It was denied that the parties were into any joint business of junk and scrap. In the written statement, defendant stated that in the month of October 2011 a sum of Rs.1,50,000/- was advanced to the plaintiff on the promise that the plaintiff would supply waste scrap and junk so as to make good the debt. The junk and scrap supplied by the plaintiff was worth Rs.74,200/- and as such the plaintiff is liable to pay the balance amount alongwith interest. It was on the same lines that the counter-claim had been set-up by the defendant against the plaintiff for recovery of Rs.87,710/- i.e. Rs.74200/- as principal amount and Rs.13,510/- as interest.

As has been noticed hereinabove, suit filed by the plaintiff for rendition of accounts was dismissed by the Trial Court. Counter-claim for recovery was accepted for an amount of Rs.75,800/- as principal amount alongwith interest @ 9% per annum from the date of filing of the suit till the date of decree and future interest @ 6% till actual realization.

The Appellate Court has affirmed the judgment and decree of the

Trial Court.

In the considered view of this Court, there is no merit in the instant appeal.

The Courts below have taken a concurrent view that no evidence whatsoever had been adduced by the plaintiff-appellant as regards existence of the partnership between the parties be it an oral partnership. The observations made by the Trial Court in this regard were in the following terms:-

> "*In the present case as well, plaintiff alleges that the partnership between the plaintiff and defendant was dissolved. Nowhere, it has been pleaded by plaintiff that the alleged partnership was oral or written. Even if, for argument sake it is taken to be oral, still the same was required to be proved by plaintiff by bringing cogent evidence of existence of the same. The question of dissolution shall come thereafter. Plaintiff could have produced books of account some information or proof about some bank accounts opened in the name of partnership firm or any record regarding terms and conditions of partnership agreed to between the parties. What to talk of sufficient material to prove on record that there even existed any oral partnership between plaintiff and defendant, plaintiff did not even disclose as to when the partnership business commenced, what was the investment made by him, how much profits and losses he shared and distributed, why and when the disputes in partnership between two partners arose. Plaintiff also failed to produce any witness from trade of transport to*

prove his partnership with the defendant. Again, plaintiff totally silent as to how much money was invested by each of the partners or up to which date plaintiff was actively involved in the affair of partnership. Unfortunately, not even an iota of evidence has been produced by plaintiff which could suggest that parties were carrying on business in the name of said firm under any partnership".

Counsel for the appellant is unable to advance any submission to demolish such view taken by the Courts below. It has been admitted that no cogent or concrete evidence had been led to prove the running of a joint business and partnership between the parties.

Insofar as the counter-claim set-up by the defendant/respondent, evidence had come-forth in the shape of documents Exhibit D1 to Exhibit D3 which carried the signatures of the plaintiff-appellant and recording an admission with regard to the outstanding amount. Even though the plaintiff-appellant had taken a stand that his signatures had been obtained on blank papers, the onus was upon him to prove that he was a victim of fraud/coercion. Even in this regard, no evidence was led by the plaintiff-appellant. Under such circumstances, the Courts below have rightfully accepted the counter-claim set-up by the defendant/respondent.

The impugned judgments are passed on due appreciation of evidence and are founded on cogent and valid reasoning.

That apart the instant appeal is accompanied by an application filed under Section 5 of the Indian Limitation Act, seeking condonation of delay of 234 days in filing the appeal. Counsel has advanced submissions towards condonation in terms of the averments made in the application. It has been pleaded that the judgment of the lower Appellate Court was passed on 20.09.2016 but in the month of November 2016, the demonetization policy of the Government had come into force/play and even the GST regime was introduced and which bacame an obstacle for the plaintiff-appellant to arrange money so as to pay the fees of the counsel.

The justification sought to be offered for the delay of 234 days in filing the appeal cannot be accepted. The applicant/appellant was bound in law to explain every single day of delay. In the application it has been conceded that the certified copy of the judgment of the lower Appellate Court dated 20.09.2016 had been applied only on 06.05.2017. By no stretch of imagination can the demonetization policy introduced by the Government be cited as a reason to cover up a delay of more than 8 months only to apply for a certified copy of a judgment for purposes of filing an appeal. In the considered view of this Court, the applicant/appellant has been totally remiss in the matter. The prayer for condonation of the inordinate delay of 234 days in filing the second appeal, cannot be accepted.

Application is dismissed.

For the reasons recorded above, the instant appeal is dismissed on merits as well as on the ground of delay.

Pending application if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

04.10.2018
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No