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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5391-2017 (O&M)
Date of decision : 08.03.2018

Manwinder Singh

... Appellant(s)

Versus

Manoj Kumar and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Sodhi, Advocate
for the appellant.

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AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for recovery of ₹85 Lacs along with interest @ 18% per annum, has been dismissed by the trial Court vide judgment and decree dated 18.04.2013 and upheld by the lower Appellate Court vide judgment and decree dated 12.05.2017.

The appellant-plaintiff instituted the suit on 21.12.2007 claiming the aforementioned relief on the premise that his father Bhupinder Singh (since deceased) had sold various gold ornaments to the defendant-Manoj Kumar being Director of M/s Bemeo Jewellers Private Limited functioning at 7/22, Makhan Street, Anasari Road, Darya Ganj, New Delhi, in the month of November/December, 1999 and the defendants had to pay the balance sum of ₹85 Lacs. It was pleaded that the suit was within limitation, for, the defendant-Manoj Kumar, on 26.02.2005 came to

Amritsar and handed over one demand draft bearing No.000519 dated 22.02.2005 drawn on HDFC Bank, Branch Cannaught Palace, New Delhi to the plaintiff at Amritsar. The said demand draft was presented and it came to know that it was a forged and fabricated document, therefore, a cause of action accrued to file the suit. An FIR bearing No.45 dated 07.03.2005 under Section 420/465/467/468/471 of Indian Penal Code was also registered against the defendants, which was pending trial.

The aforementioned suit was contested by the defendants through counsel by taking the plea of limitation, much less, denied the alleged transaction of sale of gold ornaments. It was stated that limitation for recovery of the amount was upto December 2002, which had expired, though transaction was not admitted. It was pleaded that in the year 1997-98, a scheme was started by the Income Tax Department in the name of voluntary disclosure of income scheme, whereby many tax payers made disclosures of their income and converted their uncounted assets into legal assets and to provide benefit of the aforesaid scheme, the defendant-Manoj Kumar along with his father, namely, Bishan Singh started providing accommodation/book entries of various kinds to different people according to their need on commission basis and their book entries were for long term or short term, capital gains, loans and advances, gifts, taking bogus share profits and bogus sale and purchase of Jewellery etc. The aforementioned illegal acts came to the knowledge of the Income Tax Department, resultantly, a raid was conducted on 03.08.200 in their premises and thereafter, assessment order was passed by the Income Tax Department, but did not know what treatment was given to the beneficiaries in their respective accounts. When the Income Tax Department started verifying the record of father of the plaintiff, the plaintiff wanted Bishan Chand Aggarwal and Manoj Kumar Aggarwal to give an affidavit to the effect that all the jewellery item/gold ornaments purchased from Amritsar were brought to Delhi for sale at Delhi and other places and not to deny the purchase of jewellery from Bhupinder Singh, head of Novelty Group. The plaintiff also sent a draft to defendant No.1, but the defendant No.1 refused to give any such affidavit. In this process, a dispute arose. The factum of handing over the demand draft was also emphatically denied.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to recovery of amount of ₹85 Lacs along with interest @ 85% p.an.? OPP*
2. *Whether the present suit is time barred? OPD*
3. *Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD*
4. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
5. *Whether there is no cause of action in favour of plaintiff to file the present suit? OPD*
6. *Whether the plaintiff has not come to the Court with clean hands? OPD*
7. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
8. *Whether the suit has not been properly value for the purpose of Court fee and jurisdiction? OPD*
9. *Whether the plaint is liable to be rejected u/o 7 Rule 14 CPC ? OPD*
10. *Relief*

In order to prove his case, the plaintiff examined Manwinder Singh PW-1, Rajesh Kakria as PW2, Syamantak Chakraborty, Senior

Manager, HDFC as PW3 and brought on record the various documents, whereas on the other hand, the defendant Manoj Kumar stepped into witness box as DW1 and filed his affidavit Ex.DW1/A.

In rebuttal, the plaintiff tendered certified ocpy of the complaint titled as Manoj Kumar V/s Manwinder Singh and others dated 24.03.2005 as Ex.P7, certified copy of the complaint to the SSP, Amritsar as Ex.P8, Certified ocpy of the FIR as Ex.P9, certified copy of the demand draft as Ex.P10 and certified copy of the statement Manoj Kumar as Ex.P11.

The trial Court on the basis of the preponderance of evidence dismissed the suit on the ground that the suit was barred by law of limitation and the appeal preferred thereto before the lower Appellate Court also met with the same fate.

Mr. Parteek Sodhi, learned counsel appearing on behalf of the appellant-plaintiff submits that the Courts below have committed illegality and perversity in non-suiting the appellant-plaintiff on the ground of limitation as the suit was filed almost 8 (eight) years after the alleged transaction, but failed to notice that the demand draft dated 22.02.2005 was acknowledgement of debt by the defendants, which extended the period of limitation, therefore, the suit filed in 2007 could not have been said to be barred by law of limitation. The demand draft had been proved through testimony of the Bank Officials, who proved that it was a forged and fabricated document. Manoj Kumar did not deny the handing over of the demand draft and his visit to Amritsar, which was proved through Ex.P-7 i.e. complaint titled as Manoj Kumar V/s Manwinder Singh and others dated 24.03.2005. The emphasis was laid to the contents of paragraph 2 and 4 of the aforementioned complaint (Ex.P7) to controvert the arguments, thus, prayed that the judgments and decrees are liable to be set aside on the ground alone.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sodhi.

It would be apt to reproduce the para Nos.2 and 4 of the complaint, which reads thus:-

> *"2. That the father of the accused No.1 and 2 had sold some jewellery to the firm of the complainant in the yar 1999 and the complainant paid the entire amount payable under the business deal to the father of the accused No.1 and 2.*
>
> *4. That on 26/02/05, the complainant came to Amritsar for discussion regarding the said case on the request of accused no.2, Jatinder Singh. The accused no.2 Jatinder Singh took the complainant to his Chartered accountant, who asked the complainant to sign certain affidavits which were to be submitted to the income tax department in connection with the above referred case pending against the family of the accused no.1 and 2. The complainant refused to sign any affidavit without the consultation of his lawyers and Chartered accountant and immediately returned back to Delhi."*

On conjoint reading of the aforementioned paras, it is not proved on record that the defendant had admitted the handing over of the demand draft, except that he visited Amritsar on 26.02.2005. His visit could not be connected with the preparation, much less, handing over of the demand draft. The witness of the Bank had not stated a single word that the alleged bank demand draft was produced on the account of respondent or was got forged by Manoj Kumar, thus, there was no acknowledgment of debt extending the period of limitation as per the provisions of Section 18 of the Limitation Act. All these factors have been taken into consideration by both the Courts below.

Argument of Mr. Sodhi is not able to cut an ice to enable the Court to form a different opinion than the one arrived at by the Courts below. No ground is made out for interference in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination and accordingly, the present regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

08.03.2018
Yogesh Sharma

	✓
Whether speaking/reasoned	**Yes/ No**
	✓
Whether Reportable	**Yes/ No**