

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

RSA No.5639 of 2017

Date of Decision.21.05.2018

Saurabh Kumar Mittal

...Appellant

Vs

The Managing Director and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Garg, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

C.M. No.14904-C of 2017

For the reasons stated in the application, delay of 85 days
in filing the appeal is condoned.

Application is allowed.

RSA No.5639 of 2017

The appellant-plaintiff is aggrieved of the judgment and
decree dated 02.12.2016 passed by the lower Appellate Court whereby
the appeal preferred by the respondent-Bank against the decretal of the
suit of the appellant-plaintiff seeking recovery of ₹1,06,534/- i.e.
principal amount and interest had been allowed, meaning thereby, suit of
the appellant-plaintiff had been dismissed.

The appellant-plaintiff instituted the suit seeking recovery
of the aforementioned amount i.e. ₹42,477/- as principal amount and
₹64,257/- as interest @ 18% with quarterly rests w.e.f. 8.12.2003 to
8.3.2009 along with future interest @18% per annum on the premise
that his grand father namely Amir Chand had opened an account with
Oriental Bank of Commerce, Patran Branch, Patran in the name of
plaintiff, who, at the relevant point of time was minor. An FDR No.6950

was issued in the name of the plaintiff in lieu of the deposit of amount of ₹68,011/- on 10.10.2000. On maturity on 8.12.2003, an amount of ₹94,470/- was liable to be credited in the account of the plaintiff. Since the date of birth of the plaintiff was 25.11.1990, he attained majority on 25.11.2008 and filed the suit on 27.03.2009 against the bank, as only credited the amount of ₹52,151/- on 8.12.2003 out of the maturity amount of ₹94,470/-.

The aforementioned suit was contested by the defendants by raising the plea of non-joinder of property and necessary parties i.e. Amir Chand, maintainability of the suit. However, it was stated that on maturity, the matured amount of FDR was deposited in the saving account of Amir Chand, who had withdrawn the amount of ₹42,000/- on 08.12.2003 from Saving Bank Account No.01190018333.

On the preponderance of evidence, the trial Court accepted the plea of the appellant-plaintiff by decreeing the suit ordering defendants to pay principal amount of ₹42,277/- along with interest @8% per annum w.e.f. 8.12.2003. However, the appeal laid down before the lower Appellate Court by the Bank has been accepted.

Mr. Karan Garg, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable, for, the application for amendment of the plaint by impleading the Bank in proper capacity was submitted but the same was erroneously dismissed. The lower Appellate Court has erroneously dismissed the suit for want of impleadment of Amir Chand, who had actually died, for, matured amount of ₹94,470/- had not been denied, therefore, there is gross illegality and perversity. The suit aforementioned was filed with promptitude after attaining majority as

indicated above.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Karan Garg. Admittedly, the relief in the suit aforementioned should have been against Amir Chand and in case of his demise, his legal representatives ought to have discharged the obligation by crediting the amount of matured FDR in the account of plaintiff. It was personal dispute between the plaintiff and the Amir Chand, for, the Bank had no role to play. Even the bank had not been properly impleaded as per Order 29 CPC as only the Managing Director had been arrayed. Even the attempt to rectify the same through amendment of the plaint was declined but the order declining the amendment had not been assailed as per the provisions of Order 43 Rule 1A CPC. In my view, the suit was not properly pursued.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court. The argument of Mr. Karan Garg has not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No