

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.5847 of 2018 (O&M)

Date of Decision: 15.10.2018

Baldev Singh

.....Appellant

Versus

M/s Bal Traders

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Divjyot S. Sandhu, Advocate
for the appellant.

TEJINDER SINGH DHINDSA J.(ORAL)

CM-16121-C-2018

In view of the averments made in the application duly supported by an affidavit, the delay of 150 days in re-filing the appeal is condoned.

Application disposed of.

CM-16122-C-2018

Instant application has been filed under Section 5 of the Limitation Act, seeking condonation of delay of 03 days that has occurred in filing the accompanying appeal.

In view of the averments made in the application, prayer is allowed.

Delay condoned.

Application disposed of.

Main Case

A suit for recovery of an amount of ₹5,60,465/- towards principal amount alongwith interest @18% per annum filed by plaintiff M/s

Bal Traders against defendant Baldev Singh was decreed by the Trial Court on 02.01.2016.

Civil appeal preferred by the defendant-appellant has been dismissed vide judgment dated 09.11.2017 passed by the learned Additional District Judge Kapurthala.

Resultantly, defendant-appellant is in second appeal before this Court.

Brief facts of the case are that plaintiff (respondent herein) filed a suit claiming to be a licensed commission agent and doing the activity of purchase of crops from the farmers as also giving finance for family needs and other purposes. It was averred that defendant Baldev Singh (appellant herein) also used to sell his crops at the commission agency of the plaintiff and on different occasions money had been advanced to him. Suit for recovery was instituted on the specific averments that defendant-appellant has taken a total sum of ₹5,60,465/- as on 07.03.2009. Such amount was not returned as intention of the defendant-appellant became dishonest and thereafter, he even stopped selling his crops at the commission agency of the plaintiff-respondent. It was also averred that in order to discharge his liability a cheque dated 03.02.2012 drawn at State Bank of Patiala bearing No.018209 for ₹5,60,465/- was issued but the same upon presentation was dishonoured.

Suit was contested by the defendant by filing a written statement setting up a case of denial.

As has been noticed hereinabove Trial Court decreed the suit towards recovery of ₹5,60,465/-. However, the claim of 18% interest was held to be highly excessive. Accordingly the interest on the principal amount of ₹5,60,465/- was awarded @9% per annum from the date of filing

of the suit till the judgment and decree and future interest @ 6% per annum was awarded from the date of passing of decree till realization of the decretal amount. Judgment and decree of the Trial Courts stands affirmed by virtue of dismissal of the civil appeal preferred by the defendant-appellant at the hands of the lower appellate Court.

Learned counsel for the appellant has argued that the appellant was a poor farmer and the plaintiff-respondent has taken advantage of the fiduciary relationship between the parties. That apart the Courts below have not appreciated the evidence in true perspective and the suit has been decreed on mere conjecture and surmises.

Having heard, counsel for the appellant at length and having perused the pleadings of record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

To prove the outstanding debt and liability of ₹5,60,465/-, the plaintiff-respondent had adduced on record the documents Exhibit PW3-1 to Exhibit PW3-3 pertaining to entries in the account books as well as income tax record. It is upon due appreciation of evidence adduced on record that the courts below have recorded a concurrent finding as regards the appellant herein having taken a total loan of ₹5,60,465/-.

Plaintiff-respondent also proved on record before the Trial Court the cheque Exhibit PX issued by the appellant herein towards discharge of the debt, memo Exhibit PX-1 i.e. memo reflecting dishonour of the cheque upon presentation as also legal notice Exhibit PX2 having been issued by the plaintiff-respondent upon appellant herein to make good the payment.

It has also gone uncontroverted that in pursuance to

proceedings having been initiated under the Negotiable Instruments Act, the appellant herein was held guilty vide judgment Exhibit PX-5.

The findings recorded by the Courts below are based on cogent and valid reasoning and due appreciation of evidence.

This Court does not find any basis that would warrant interference in the matter.

Instant appeal does not raise any question of law.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

October 15, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No