

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

RSA-96-2017 (O&M)

Date of decision: September 17, 2018

Shiv Dayal

...Appellant

Versus

Vicky alias Vikram Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Gurcharan Dass, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/appellant filed a suit for mandatory injunction directing defendant to refund Rs.6154/- with interest and to hand over his equipments, kept by the defendant in his illegal custody, with consequential relief of permanent injunction restraining the defendant from selling or moving the said equipments. It was alleged that plaintiff is a carpenter. In the month of August, 2009, on request of the plaintiff, defendant agreed to work in his *Kothi* measuring 250 sq. yards, situated in Haibowal Khurd, Ludhiana. On completion of the work, defendant refused to make payment of the balance amount and also kept his *Aari* machine, tools etc. on the ground that plaintiff had not carried out the work as per his satisfaction. Defendant resisted the suit. In his written statement, he pleaded that all the machineries were lifted by the plaintiff.

Further plaintiff did not affix *ad valorem* court fee for recovery of the alleged amount. After hearing both the parties and perusing oral as well as documentary evidence, the trial court dismissed the suit. It observed that plaintiff had claimed refund of Rs.6154/- but did not pay the *ad valorem* court fee and thus, suit was hit by Order 7 Rule 11 CPC. Further plaintiff had filed a suit for mandatory injunction instead of recovery of possession of specific movable property, which could not be granted as per Section 41 (h) of the Specific Relief Act. Findings were affirmed by the lower appellate court.

I find no infirmity with the findings arrived at by both the courts below. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM Nos.183-C & 184-C of 2017:

Since the main appeal has been dismissed on merits, these applications for condonation of delay do not survive and the same are also dismissed.

(RAJAN GUPTA)
JUDGE

September 17, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No