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

RSA No.2585 of 2019 (O&M)
Date of Decision: July 25, 2019

Tilak Raj

...Appellant

Versus

M/s Achleshwar Trading Company and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. A.S. Manaise, Advocate
for the appellant.

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JAISHREE THAKUR, J. (Oral)

CM-7047-C-2019

1. This is an application filed under Order 33 Rule 2 CPC seeking leave of the court to file the appeal as indigent person.

2. It is contended that the appellant is an indigent person and does not possess sufficient means to pay the court fee as prescribed by law and at present, he is in custody in Central Jail, Gurdaspur and undergoing sentence in case under Section 138 of the Negotiable Instruments Act.

3. In view of the grounds mentioned in the application, leave to file the appeal as an indigent person is granted to the appellant.

4. The application stands allowed accordingly.

RSA-2585-2019

1. The instant regular second appeal has been filed by appellant-

defendant No.1 (henceforth called 'the appellant') against the judgment and decree dated 22.02.2019 passed by the first Appellate Court whereby, the appeal filed by the appellant against the judgment and decree dated 04.12.2015 passed by the lower court, decreeing the suit of the respondents-plaintiffs (henceforth called 'the respondents'), has been dismissed.

2. In brief, the facts are that the respondents filed a civil suit for recovery of ₹ 11,78,378/- along with interest @ 18% per annum from the appellant and other defendants, while averring that the appellant and other defendants approached the respondents and borrowed money from them frequently by stating that they will adjust the borrowed amount by bringing crops at the shop of the respondents and in this respect, the appellant and other defendants borrowed a sum of ₹ 14,74,345/- during the period 08.05.2010 to 04.11.2010. Thereafter, the appellant and other defendants brought their crops to the shop of the respondents. The appellant also admitted and acknowledged the outstanding amount of ₹ 10,96,322/- as on 20.12.2010 vide balance confirmation dated 20.12.2010. At the same time, the appellant issued two post dated cheques 30.05.2011 and 07.06.2011 for ₹ 5,00,000/- and ₹ 5,96,322/- respectively, which were dishonoured by the bankers of the appellant on its presentation. Thereafter, the respondents filed a complaint under Section 138 of the Negotiable Instruments Act against the appellant and an FIR also came to be registered against the appellant and other defendants. When the appellant and the other defendants refused to pay the outstanding amount, a civil suit came to be filed.

3. Upon notice, the appellant and other defendants appeared and

contested the suit by alleging that the appellant and other defendants used to bring crops in the shop of the respondents and at that time, the respondents used to get the thumb impression/signatures of the appellant. It was alleged that the cheques, if any, are forged and fabricated by the respondents. It was submitted that the appellant had not borrowed any amount from the respondents nor had he confirmed or admitted the balance outstanding amount on 22.12.2010. It was submitted that the respondents approached the appellant and other defendants and gave an assurance for sending defendant No.2 (son of the appellant) abroad and demanded ₹ 8 lacs. The appellant got sanctioned a loan of ₹ 8 lacs from the Canara Bank through the respondents and the respondents obtained the cheque book from the bank and got the signatures of the appellant and thereby, obtained a sum of ₹ 8 lacs from the appellant, but did not send defendant No.2 abroad and also misused the said cheques. It was claimed that no amount is due and payable by the appellant and other defendants. Remaining averments of the plaint were denied.

4. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court decreed the suit along with costs and interest qua the appellant herein, while dismissing the suit qua defendants No.2 to 4. Aggrieved, the appellant filed an appeal before the first Appellate Court, which stood also dismissed. Now, both the judgments and decrees passed by the courts below have been assailed in this regular second appeal.

5. Learned counsel for the appellant argues that the courts below failed to appreciate the fact that the Bahi entries produced by the

respondents have no evidentiary value, once the signatures have been denied by the appellant with a specific plea that some signatures were obtained by the respondents by misrepresentation at the time of sale of crops. It is also contended that the respondents have failed to produce any income tax return or account to prove the advancement of loan or outstanding balance towards the appellant. Regarding cheques Ex.P3 and Ex.P4, it is submitted that these were signed by the appellant at the time of obtaining loan from Canara Bank and the same were taken by the respondents from Canara Bank and later on they misused the same by filing this frivolous recovery suit.

6. I have heard learned counsel for the appellant and have gone through the case file.

7. The lower court, while decreeing the suit of the respondents qua the appellant herein, has observed that it is not dispute that the respondents and the appellant had business dealings for the last 15-20 years and the appellant used to take advance from the respondents. The respondents filed the present suit against the appellant on the basis of balance confirmation/undertaking Ex.P1, the receipt issued by the appellant as well as ledger Ex.P2 signed by the appellant. As per receipt Ex.P1, the appellant issued two cheques, one for ₹ 5 lacs and another for ₹ 5,96,332/-, which were dishonoured on their presentation. During his cross-examination DW1 Tilak Raj (appellant herein) admitted his signatures on the cheques Ex.P3 and Ex.P4. Ex.D1 to Ex.D20 receipts as relied upon by the appellant to contend that loan amount was returned by selling the crops, do not bear the signatures of proprietor of the respondent-company or his

son nor the appellant brought on record any fact that who was scribe of these receipts. DW3 Dev Kumar, Clerk examined by the appellant rather proved the version of the respondents. During the course of evidence, the appellant taken a different plea, as from his written statement. Further, the appellant failed to prove his version as taken in the written statement. The findings recorded by the lower court, were affirmed in appeal by the first Appellate Court.

8. During the course of arguments, learned counsel for the appellant failed to point out any perversity in the findings recorded by the courts below. In the present case, PW1 Rakesh Bhandari has proved on record balance confirmation undertaking given by the appellant as Ex.P1, ledger account of the appellant as Ex.P2, certified copies of the cheques as Ex.P3 and Ex.P4, certified copies of the bank memos as Ex.P5 and Ex.P6, statement of account till 04.03.2014 as payable by the appellant to the respondents as Ex.P7. Nothing fruitful could be extracted from the witness during his lengthy cross-examination to the effect that balance confirmation undertaking and the cheques are a result of fraud and misrepresentation or that the respondents had taken a sum of ₹ 8 lacs from the appellant on the pretext of sending defendant No.2 to Canada. On the other side, DW1 Tilak Raj Singh (the appellant herein) during his cross-examination admitted that he had been taking advance payment from the respondents and in lieu of that crops were to be supplied to the respondents. He also admitted his signatures on the cheques Ex.P1 and Ex.P2, besides admitting that he did not have any receipt to show payment of ₹ 8 lacs was made to the respondents, as alleged. He further admitted that he has not filed any suit

for recovery of the said amount from the respondents, allegedly paid for sending defendant No.2 abroad. Rather, the case of the respondents is supported by the documentary evidence.

9. The appellant set up the plea of fraud and misrepresentation, however, miserably failed to prove the same. It goes without saying that it is very easy to raise a plea of fraud but it is equally difficult to prove the same. It is so said because a plea of fraud is to be proved like a criminal charge. However, since in the case in hand, appellant took the plea of fraud in a casual manner and did not make even a sincere effort to prove the said plea of fraud by leading relevant and cogent evidence in this regard, he was bound to fail. That is what has been held by both the learned courts below. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also. This view taken by this court also finds support from the judgments of the Hon'ble Supreme Court and judgments of this court in ***Gautam Sarup vs. Leela Jetly and others, 2008(7) SCC 85, Santa Singh vs. Tarsem Singh, 2010(67) RCR (Civil) 520, Devi Lal vs. Shokaran and another, 2011(5) RCR (Civil) 615, Usha and others vs. Subhash Chander and others, 2014(5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills vs. Sham Singh and others, 2015(9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another vs. Raghbir Singh and another) decided on 13.1.2017, RSA No.1239 of 2016 (Satbir Singh vs. Mukesh Rani and others) decided on 17.1.2017, State Bank of India vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai, 1969***

AIR (SC) 1330, Surjit Lal Chhabda vs. Commissioner of Income-tax, Bombay 1976 AIR (SC) 109, Surjit Singh and others vs. Gurmit Singh and others, 2010(3) PLR 122 (P&H), Hawa Singh vs. Daya Nand and others, 2010(21) RCR (Civil) 918, Gurmail Singh vs. Rajbir Singh and another, 2014 (4) RCR (Civil) 397 and Jagdev Singh and another vs. Major Singh and others, 2014(82) RCR (Civil) 214. Thus, the plea of fraud and forgery has been rightly rejected by the courts below.

10. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

11. Dismissed.

(JAISHREE THAKUR)
JUDGE

July 25, 2019
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No