

RSA No.4046 of 2019 (O&M)

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

RSA No.4046 of 2019 (O&M)

Date of decision: 30.08.2019

Smt. Ranjit Kaur and others

.....Appellants

versus

M/s Chohan Art Diamond & Jewellers & partnership firm

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Shiv Kumar Sharma, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Defendants through this Regular Second Appeal have laid challenge to judgment and decree dated 20.07.2019 of the lower appellate Court, affirming judgment and decree dated 17.07.2017 of the trial Court, whereby suit of the respondent-plaintiff for recovery of ₹4,50,000/- along with interest @ 9% per annum from the date of institution of suit till decision and future interest @ 6% per annum from the date of decision till realization was decreed against the appellants.

Briefly, Baldev Singh, husband of appellant No.1 and father of respondents No.2 to 5 purchased gold ornaments from the firm of respondent-plaintiff for a sum of ₹4,54,957/- vide bill No.70 dated 15.02.2011 and issued two cheques bearing Nos.847009 for ₹2,00,000/- and 847010 for ₹2,50,000/- dated 15.03.2011 and 18.03.2011, respectively, and paid balance amount of ₹4,957/- in cash to discharge his liability. On presentation of the said cheques in bank both the cheques bounced.

Consequently, when the respondent-firm tried to contact Baldev Singh, it came to know that he had already expired on 12.03.2011. Respondent-firm

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approached appellants-defendant being his legal heirs to pay the purchase price of the ornaments in discharge of the liability of their deceased father and husband, from whom they had inherited various property, but in vain.

With these broad submissions, respondent-plaintiff-firm filed suit for recovery of ₹4,50,000/- by sale of the property of appellants along with appropriate interest.

After tooth and nail contest of the appellants-defendant, trial Court after holding trial, decreed the suit vide judgment and decree dated 17.07.2017.

Being aggrieved, appellants approached the First Appellate Court, but remained unsuccessful as their appeal was dismissed vide judgment and decree dated 20.07.2019.

Learned counsel for the appellants *inter alia* contends that respondent-firm had mis-used the cheques allegedly issued by their ancestor Baldev Singh. Both the Courts below failed to appreciate that appropriate remedy for the appellants was to file complaint under Section 138 of the Negotiable Instruments Act (in short the 'Act') against Baldev Singh and not the present suit for recovery.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Respondent-firm could not have filed complaint under Section 138 of the Act against the appellant-defendants as they were not signatory to the cheques in question. If the complaint, if any, would have been filed by the respondent against the appellants, or against Baldev Singh due to his

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action against the appellants. Considering this aspect of the matter, this Court is of the opinion that appropriate remedy for the respondent was to file suit for recovery by sale of property of Baldev Singh, which the appellants have inherited from him after his death.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

Executing Court is directed to adopt all coercive methods to recover the decretal amount from the appellants.

(Ramendra Jain)
Judge

August 30, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No