IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 4422 of 2012 (O&M)
Date of decision: May 09, 2019

M/s Punjab Kashmir Finance Ltd.
... Appellant

Vs.
Kashmir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohit Sud, Advocate
for the appellant.

Mr. Vijay Rana, Advocate
for the respondents.

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<u>SURINDER GUPTA, J</u>

This is appeal against the judgment passed by District Judge, Jalalndhar whereby appeal filed by Kashmir Singh against the judgment and decree passed by Additional Civil Judge (Senior Division), Jalandhar dated 26.8.2010 was accepted to the extent that the same is not binding on appellant Kashmir Singh.

The brief facts of the case are that Amrik Singh-respondent no.3 approached plaintiff-appellant for loan of ₹2,70,000/- to purchase tractor, which was advanced to him through a demand draft. Amrik Singh paid the amount of draft to Kashmir Singh who is proprietor of M/s Zimidar Tractors. Later on he committed fraud by not getting the hire purchase agreement executed in favour of appellant or to return the amount resulting in filing of the suit against Amrik Singh, M/s Zimidara Tractors and its proprietor Kashmir Singh.

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Before proceeding further it will be relevant to take note of the pleadings as contained in the plaint where the plaintiff-appellant has alleged that it was defendant no.3 Amrik Singh who approached him for loan for getting tractor "Balwan 500 make" on hire purchase from plaintiff company. The loan sought was of ₹2,70,000/- and remaining price of tractor was ₹1,40,000/- was to be paid by plaintiff-appellant to M/s Zimidara Tractor and Kashmir Singh. It was further agreed by him that after the purchase of tractor he will complete the formalities of execution of hire purchase agreement and other documents in favour of plaintiff company. The payment of ₹2,70,000/- through draft No. 972239 dated 21.6.2002 drawn on Oriental Bank of Commerce was made in the name of Amrik Singh and he endorsed the draft in favour of defendants no.1 and 2. Amrik Singh had also assured plaintiff that on payment of ₹2,70,000/- he will be delivered tractor by defendant no.1 and 2. Plea of plaintiff against defendants no.1 and 2 is that they had assured it of supply of tractor to defendant no.3, which was never supplied despite repeated requests and reminders.

Learned trial court decreed the suit holding Amrik Singh as well as defendants no.1 and 2 liable to pay decretal amount to the tune of ₹2,88,907/-. In the appeal filed by Kashmir Singh, the judgment and decree passed by the trial court against him was set aside with the observations in para no.14 and 17 which are reproduced as follows :-

> *"14. From the perusal of the evidence on record, I find that as per case of the plaintiff, Amrik Singh defendant no.3 approached the plaintiff company for the loan. A draft of ₹2,70,000/- was also handed over to him. Defendant no.3 Amrik Singh is to purchase the Tractor after paying ₹1,40,000/-. Defendant no.3 is to execute the hire*

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purchase agreement etc. with the plaintiff. Defendant no.1 has no privity of contract with the plaintiff. Mere fact that defendant no.1 received that amount of ₹2,70,000/- from defendant no.3 in no way makes him liable towards the plaintiff as he has no privity of contract with the plaintiff. It is in the cross examination of PW4 Raminderjit Singh that defendant no.1 Kashmir Singh never visited their office. The receipt, which was given by Zimidar Tractors also states that received from Punjab Kashmir Finance Limited, Jalandhar on account of S. Amrik Singh. This amount was received on behalf of Kashmir Singh. As defendant no.1 has not entered into contract with the plaintiff nor he ever visited their office nor they took loan from the plaintiff, therefore, plaintiff has no locus standi nor privity of contract vis-a-vis defendant no.1.

15. xx xx xx

16. xx xx xx

17. Therefore, from the evidence on record, I find that Kashmir Singh, appellant is not liable to pay any amount to the plaintiff M/s Punjab Kashmir Finance Limited and the plaintiff is entitled to recover the amount from Amrik Singh, defendant, who has borrowed the loan from the plainitff."

Learned counsel for appellant has argued that the first appellate court has misread the observations of the case titled as ***Daya Nand vs. The State Bank of India,*** *2009 (5) R.C.R. (Civil) 224 (P&H).* In that case, issue before the court was as to whether bank could proceed against the loanee even if the vehicle for which the loan had been advanced had not been supplied to him by the dealer. The court had observed that even if the vehicle had not been delivered the loanee is liable to pay the loan amount. In the present case, plea raised by learned counsel for plaintiff-appellant is

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that in the event of non delivery of the vehicle to the loanee, the financier can recover the amount from the loanee but not the dealer who had to supply the loanee with tractor against payment of its price which include payment received by loanee from plaintiff as loan. The first appellate court has rightly observed while accepting the appeal of respondent no.1 that there was no privity of contract between the plaintiff-appellant and defendant/respondents no.1 and 2. The delivery of vehicle was an issue between the respondent no.1 and 2 and Amrik Singh. The liability to return the loan amount to the appellant is of Amrik Singh and not of respondents no.1 and 2. The judgment ***Daya Nand*** (supra) has been rightly relied upon by the first appellate court while accepting the appeal of plaintiff. On perusal of judgment delivered by first appellate court, I find no legal or factual infirmity calling for interference in the same.

This appeal has no merits.

Dismissed.

May 09, 2019 **(Surinder Gupta)**
deepak **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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