

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

**RSA No.2564 of 2016 (O&M)
Date of Decision.20.03.2019**

Avtar Singh

...Appellant

Vs

Sham Sunder Sethi

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lalit Kumar Sharma, Advocate for
Mr. Sunil Kumar Sharma, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.6813-C of 2016

For the reasons stated in the application, delay of 2 days
in filing of the appeal is condoned.

Application is allowed.

C.M. No.6814-C of 2016

For the reasons stated in the application, delay of 62 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.2564 of 2016

The appellant-defendant has not been successful in
defending the appeal preferred by the plaintiff, who was not
successful in the trial Court claiming recovery of ₹2,90,730/- along
with interest, which has been decreed by the lower Appellate Court.

The respondent-plaintiff sought recovery of the
aforementioned amount on the premise that the appellant-defendant
was his friend and on 08.03.2005 transferred an amount of ₹2 lakhs in
his account bearing No.15328 of Canara Bank as loan and another

amount of ₹29,000/- on 17.03.2005 and accordingly, a draft of ₹1,50,000/- in favour of M/s Dasmesh Body Builders from where the defendant got the truck body built.

Appellant-defendant opposed the suit challenging locus standi of the plaintiff and payment of money. It was stated that parties to the litigation were not friendly to each other and owing to animosity, present suit has been filed. Defendant applied for grant of loan for purchase of truck chassis from Canara Bank, Sadhu Ashram, Una Road, Hoshiarpur and purchased truck chassis financed by the Canara Bank. Plaintiff introduced defendant with Raj Kumar, Manager of the Bank and assured that he would get the loan sanctioned. Defendant was also introduced by the plaintiff with Harwinder Singh, proprietor of M/s Dashmesh Body Builder and paid ₹1,43,000/- against the receipt. There was no direction or permission granted by the defendant to the plaintiff for payment of ₹1,50,000/-

Since the parties were at variance, trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to recovery of ₹2,90,730/- along with interest @12% per annum as prayed for? OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 4. Whether the suit of plaintiff is not maintainable in the present form? OPD*

5. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD

6. Relief.”

Plaintiff in support of pleadings examined himself as PW1, Onkar Chand Sharma, Officer, Canara Bank as PW2 whereas defendant examined DW1 Rajinder Kumar, Ahlmad, DW2 Makhan Singh and himself appeared as DW3.

The trial Court on the basis of evidence brought on record dismissed the suit on the premise that plaintiff failed to prove that it was loan transaction but the lower Appellate Court reversed the finding.

Mr. Lalit Kumar Sharma, learned counsel appearing on behalf of the appellant submitted that there was no direction or authority issued by the defendant to the plaintiff for preparation of draft in favour of Dashmesh Body Builder as he had already paid cash amount of ₹1,43,00/- regarding body of the truck against receipt. Transaction of ₹2 lakhs in his account was not in respect of loan. Both the transactions alleged in the plaint seeking recovery of the amount were not co-related.

I am afraid aforementioned argument is not sustainable for the simple reason that stand taken in the written statement by the defendant is that he had obtained loan from Canara Bank for getting body of the truck built from M/s Dashmesh Body Builder whereas account of the defendant is also in the same bank from where he had taken the loan, thus, creation of receipt of ₹1,43,000/- is an afterthought. If at all there was some truth, nothing prevented the

defendant to examine the witness from M/s Dashmesh Body Builder regarding payment of ₹1,43,000/- in cash. All these factors weighed in the mind of the lower Appellate Court while decreeing the suit.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No